BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AN/SM/2024-25/30748-30751

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of

Noticees No.	**Noticee Name**	**PAN**
1	Bharosa Technoserve Private Limited	AAGCB2957E
2	Mr.Sanjay Bhargava	AHWPB0829R
3	Mr. Sahil Bhargava	DCDPB3950A
4	Ms. Anita Bhargava	AHWPB0830E

In the matter of Bharosa Technoserve Private Limited

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter also ‘SEBI’, in short) conducted inspection of Bharosa Technoserve Private Limited, SEBI Registered Investment Adviser, (hereinafter also referred as ‘Noticee’ /‘Noticee 1’/ ‘N1’ ‘Entity’ / ‘IA’ / ‘Investment Adviser’), in short) for the period for the period of April 01, 2019 to March 31, 2020 (hereinafter also ‘Relevant Period’ / ‘Inspection Period’ / ‘IP’, in short), to look into the compliance with respect to concerned regulations and circulars, investor service / complaints, KYC compliance, on-boarding of clients, fees /charges, conditions of grant of registration, risk evaluation and dealing with clients and their money and Anti Money Laundering (AML) guidelines issued by SEBI from time to time etc.

2. Pursuant to inspection and based on the findings of the inspection and examination of replies of Bharosa Technoserve Private Limited by SEBI, SEBI had initiated Adjudication Proceedings under Section 15-I of the SEBI Act, 1992 (hereinafter also referred to as “SEBI Act”) in respect of (i) Bharosa Technoserve

Private, Investment Adviser (hereinafter also referred to as 'Noticee 1' /'Noticee'/ 'N1') and u/s 15HB of SEBI Act against (ii) Mr. Sanjay Bhargava (hereinafter also referred to as 'Noticee 2' / 'N2'), Director and the representative of the Investment Adviser (iii) Mr. Sahil Bhargava, CEO and Director of Investment Adviser (hereinafter also referred to as 'Noticee 3' / 'N3') and (iv) Ms. Anita Bhargava, Compliance officer and Director of the Investment Adviser (hereinafter also referred to as 'Noticee 4' / 'N4'), (hereinafter N2, N3 and N4 collectively also referred to as 'Noticees'' and all the Noticees collectively also referred to as 'Noticees' in short) for various alleged violation of SEBI Act, Regulations and Circulars.

B. **APPOINTMENT OF ADJUDICATING OFFICER**

3. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to inquire and adjudicate upon the alleged violations of various provisions of SEBI Act 1992, SEBI (Investment Advisers) Regulation, 2013 (hereinafter also referred to as "IA Regulations, 2013" / "SEBI (IA) Regulations, 2013") and SEBI Circulars by the Noticees, the competent authority in exercise of powers under Sub-section (1) of Section 15-I of the SEBI Act, and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("Adjudication Rules") appointed the undersigned as the Adjudicating Officer ('AO') to inquire into and adjudge upon the aforesaid alleged violations against the Noticees. The said proceeding of appointment was communicated to the undersigned vide Communique dated June 20, 2023.

C. SHOW CAUSE NOTICE, REPLIES, HEARING:

4. A Common Show Cause Notice No. SEBI/HO/EAD-5/AN/SM/32654, 32655, 32658 and 32659/1/2023 dated August 11, 2023 (hereinafter collectively also referred as 'SCN' / 'SCN dated August 11, 2023' in short) was issued to Noticees in terms of Section 15-I of the SEBI Act, 1992, Rule 4 of SEBI Adjudication Rules,

1995 to show cause as to why an inquiry should not be held against them and why penalty, if any, under section 15EB and 15HB of SEBI Act, 1992 be not imposed on the Noticees.

5. Briefly stated, the following was inter alia alleged in the SCN dated August 11, 2023 in respect of the Noticees:

"....

7. Based on the findings of the inspection and examination of replies of Noticee 1 by SEBI, the following was inter alia observed and/or alleged by SEBI:

7.1. ***Using payment gateway mechanism to receive fees-***

With respect to Noticee 1:
The entity has accepted fees for providing investment advice through payment gateway mechanism and accordingly, the entity has violated the provisions of relevant SEBI circular barring IAs from receiving fees through payment gateways.

With respect to Noticee 2:
The IA has accepted fees for providing investment advice through payment gateway mechanism and accordingly, has violated the provisions of relevant SEBI circular barring IAs from receiving fees through payment gateways. The entity being Director and representative is among the senior management of the IA and accordingly, responsible for the said violations of the IA

With respect to Noticee 3:
The IA has accepted fees for providing investment advice through payment gateway mechanism and accordingly, the IA has violated the provisions of relevant SEBI circular barring IAs from receiving fees through payment gateways.
The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:
The Investment Adviser has accepted fees for providing investment advice through payment gateway mechanism and accordingly, it has violated the provisions of relevant SEBI circular barring IAs from receiving fees through payment gateways. The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

7.1.1. Policy on Fees Charged by IA to clients
As submitted in point 23 of the PIQ the entity offers three types of services and fee charged for each of them excluding taxes are as follows-

a. Bharosa Club Memership- Rs. 1000/year.

b. Bharosa Club Smallcase- Rs. 1000/year.

c. 360 Degree Financial Plan- Rs. 50,000/year.

7.1.2. Further to above, the entity vide point 25 c. of the pre-inspection questionnaire ("PIQ") (Copy of PIQ is placed at ***Annexure-4****) has m that it is using Razor pay as payment processor. Further, from the account statement of HDFC A/C 50200016002298 maintained by the entity (copy of extract of bank statement is placed at* ***Annexure-5****), it is noted that regular payments are received by the entity through Razor pay payment gateway.*

7.1.3. With regard to above, as per SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019, all IAs shall accept fees strictly by account payee crossed cheques / demand draft or by way of direct credit into their bank account through NEFT/ RTGS/IMPS/UPI. Hence, it is noted that by using payment gateway mechanism to receive fees the entity has violated the provision of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

Violations alleged:

With respect to Noticee 1:
Therefore, it is alleged that Noticee has violated Clause 1. (iii) of SEBI Circular-SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2:
Therefore, it is alleged that Noticee has violated Clause 1.(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:
Therefore, it is alleged that Noticee has violated Clause 1.(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:
Therefore, it is alleged that Noticee has violated Clause 1.(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

7.2. ***Not informing SEBI about material changes and Not taking prior approval for change in control-***

With respect to Noticee 1:
The entity has failed to inform SEBI about material changes in shareholding pattern and failed to take prior approval for change in control.

With respect to Noticee 2:
a. The IA has failed to inform SEBI about material changes in shareholding pattern and
b. The IA has failed to take prior approval for change in control and non-cooperated with the inspection team by submitting false information in respect of change in control and material changes in information already submitted to SEBI.
The entity being Director and representative is among the senior management of IA and accordingly, responsible for the said violations of the IA

With respect to Noticee 3:
a. The IA has failed to inform SEBI about material changes in shareholding pattern.
b. The IA has failed to take prior approval for change in control and non-cooperated with the inspection team by submitting false information in respect of change in control and material changes in information already submitted to SEBI.
The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:
a. The IA has failed to inform SEBI about material changes in shareholding pattern.
b. The IA non-cooperated with Inspection team by submitting false information in respect of change in control and material changes in information already submitted to SEBI and also, failed to take prior approval for change in control.

The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

7.2.1. Regulation 13 which states that the certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-

(a) the investment adviser shall abide by the provisions of the Act and these regulations;

(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted.

*7.2.2. The entity vide points 16 and 17 of the pre-inspection questionnaire (**Annexure-4**) submitted that there is no material change in information and particulars previously submitted to SEBI and no change control of the entity. The entity, vide points 7 and 14 respectively, also submitted that Ms. Anita Bhargava is its Compliance Officer and Mr. Sanjay Bhargava and Mr. Sahil Bhargava are its investment advisors. Further, on the day of inspection the entity submitted that Mr. Sahil Bhargava became CEO during the Inspection Period and Mr. Sanjay Bhargava continued to serve as Investment Advisor for the Company. The entity also submitted its shareholding pattern as on 31.03.2020 from which it is noted that Mr. Sahil Bhargava has fifty one percent shares of the entity and hence, he is the majority shareholder. (copy of relevant submissions made by the IA on the day of inspection in this regard are placed at **Annexure-6** and shareholding pattern as on March 31, 2020 is placed at **Annexure-7**).*

*7.2.3. With regard to above, from the information available in the records in respect of the entity, it is noted that as on July 15th, 2017 Shri Kamal Manocha is the CEO and Compliance Officer of the entity, further Shri Kamal Manocha and Shri Rahul Goyal are Investment Advisors of the entity **(Annexure-6).** It is also noted that as on 01.01.2016 Mr. Sanjay Bhargava has 69.25 percent shares of the entity and hence, he is the majority shareholder. **(**Copy of details of shareholding of Sachin Bhargava'**Annexure-8).***

SEBI Observations:

7.2.4. From above it is noted that the entity has not informed SEBI about material changes in the appointments of CEO, Compliance Officer and Investment Advisors and change in Shareholding pattern. Further, the entity also failed to take prior approval for change in control from Shri Sanjay Bhargava to Shri Sahil Bhargava. The entity also non-cooperated with the inspection team by submitting false information in respect of change in control and material changes in information already submitted to SEBI.

Violations alleged:

With respect to Noticee 1:

a. Therefore, it is alleged that the Noticee by not informing SEBI about material changes in shareholding pattern, the entity has violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

b. By not-cooperating with the inspection team by submitting false information in respect of change in control and material changes in information already submitted to SEBI and by not taking approval for change in control, the entity has violated Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2:

a. Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

b. Therefore, it is alleged that the Noticee has violated Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:

a. Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

b. It is alleged that the Noticee has violated Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:

a. Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

b. It is alleged that the Noticee has violated Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

7.3. ***Not performing the risk profiling in the requisite manner and outsourcing the same-***

With respect to Noticee 1:
The entity has not performed the risk profiling in the requisite manner of all its 187 clients to whom advice is provided by the entity. Further, the entity outsourced a core function of risk profiling of 48 out 187 clients to Smallcase. Such clients have access to the advice of the entity without its intervention or review.

With respect to Noticee 2:
The IA has not performed the risk profiling in the requisite manner of all its 187 clients to whom advice is provided by the entity. Further, the IA has outsourced a core function of risk profiling of 48 out 187 clients to Smallcase. Such clients have access to the advice of the entity without its intervention or review. The entity being Director and representative is among the senior management of IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:
The IA has not performed the risk profiling in the requisite manner of all its 187 clients to whom advice is provided by the entity. Further, the IA outsourced a core function of risk profiling of 48 out 187 clients to Smallcase. Such clients have access to the advice of the IA without its intervention or review.
The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:
The IA has not performed the risk profiling in the requisite manner of all its 187 clients to whom advice is provided by the entity. Further, the IA outsourced a core function of risk profiling of 48 out 187 clients to Smallcase. Such clients have access to the advice of the IA without its intervention or review.
The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

7.3.1. Regulation 16 of SEBI IA Regulations, 2013 and SEBI circular no. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 has mandated that the IA shall undertake proper risk profiling and consent of client on risk profiling and shall provide investment advice only after the same.

*7.3.2. The entity vide point 18 of PIQ (**Annexure-4**) has submitted that for clients taking general advice (Client of their Bharosa Club Membership), risk profiling and suitability assessment is unnecessary, there are 138 such clients out of total 187 clients. However, in this regard it is noted that the regulation do not differentiate between general and specific advice. Further, as submitted by entity, the entity provide comparative data so that their clients make an investment decision and they provide model portfolios with risk categorization in which the clients can invest by doing their own risk profiling. The entity also takes consideration for this service.*

7.3.3. From above it is noted that the clients of the entity taking its Bharosa Club services are indeed getting investment advice to invest/deal in securities from the entity and hence, risk profiling and suitability assessment should have been done in the requisite manner.

7.3.4. For 48 clients who have subscribed for entity's services through Smallcase, entity on the day of inspection has submitted that risk profiling of such customers' are performed by Smallcase. After risk profiling is done the customer has access to the advice of the entity without their intervention or review.

*7.3.5. For one client who has taken advisory under 360 degree financial plan of the entity the entity has provided a copy of risk profiler sent to him vide email (Copy of e-mail advising the client under 360 degree financial plan **Annexure-9**) however, the responses of the client and suitability assessment is not provided. Also, the risk profiler is not as per requirements under regulation 16.*

SEBI Observations:
7.3.6. Hence, from above it is noted that the entity has not performed the risk profiling in the requisite manner in respect of all its clients and outsourced a core function of risk profiling of 48 clients to Smallcase.

Violations alleged:

With respect to Noticee 1:
Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations,

2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.

With respect to Noticee 2:
Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:
Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:
Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

7.4. ***Not performing the suitability assessment and outsourcing the same***

With respect to Noticee 1:
The entity has not performed the risk profiling in the requisite manner of all its 187 clients to whom advice is provided by the entity. Further, the entity outsourced a core function of risk profiling of 48 out of 187 clients to Smallcase. Such clients have access to the advice of the entity without its intervention or review/assessment.

With respect to Noticee 2:
The IA has not performed the risk profiling in the requisite manner of all its 187 clients to whom advice is provided by the entity. Further, the IA has outsourced a core function of risk profiling of 48 out of 187 clients to Smallcase. Such clients have access to the advice of the entity without its intervention or review/assessment. The entity being Director and representative is among the senior management of IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:
The IA has not performed the risk profiling in the requisite manner of all its 187 clients to whom advice is provided by the entity. Further, the IA outsourced a core function of risk profiling of 48 out of 187 clients to Smallcase. Such clients have access to the advice of the IA without its intervention or review/assessment.
The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:
The IA has not performed the risk profiling in the requisite manner of all its 187 clients to whom advice is provided by the entity. Further, the IA outsourced a core function of risk profiling of 48 out of 187 clients to Smallcase. Such clients have access to the advice of the IA without its intervention or review/assessment.
The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

*7.4.1. The entity vide points 18 of PIQ (**Annexure-4**) has submitted that for clients taking general advice, risk profiling and suitability assessment is unnecessary, there are 138 such clients out of total 187 clients. However, in this regard it is noted that the regulation do not differentiate between general and specific advice. Further, as submitted by entity, the entity provide comparative data so that their clients make an investment decision and they provide model portfolios with risk categorization in which the clients can invest by doing their own risk profiling. The entity also takes consideration for this service.*

7.4.2. From above it is noted that the clients of the entity taking its Bharosa Club services are indeed getting investment advice to invest/deal in securities from the entity and hence, risk profiling and suitability assessment should have been done in the requisite manner.

7.4.3. For 48 clients who have subscribed for entity's services through Smallcase, entity on the day of inspection has submitted that risk profiling of such customers' are performed by Smallcase. After risk profiling is done the customer has access to the advice of the entity without their intervention or review.

7.4.4. For one client who has taken advisory under 360 degree financial plan of the entity the entity has provided a copy of risk profiler sent to him vide email however, the responses of the client and suitability assessment is not provided.

SEBI Observations*:*

7.4.5. Hence from above, it is noted that the entity has not performed suitability assessment in respect of all its clients and outsourced a core function of suitability assessment to Smallcase for 48 of its clients.

Violations alleged:

With respect to Noticee 1:

Therefore, it is alleged that Noticee has violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.

With respect to Noticee 2:

Therefore, it is alleged that Noticee has violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:

Therefore, it is alleged that Noticee has violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:

Therefore, it is alleged that Noticee has violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

7.5. ***Not providing requisite disclosure-***

With respect to Noticee 1:

In respect of client under 360 degree financial planning the entity has not provided adequate disclosures as prescribed in the regulations related to material facts relating to the key features of the products class advised particularly, performance track record and failed to draw the client's attention to the warnings relating to an investment product class which it is recommending to the client

With respect to Noticee 2:

In respect of client under 360 degree financial planning the IA has not provided adequate disclosures as prescribed in the regulations related to material facts relating to the key features of the products class advised particularly, performance track record and failed to draw the client's attention to the warnings relating to an investment product class which it is recommending to the client.

The entity being Director and representative is among the senior management of IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:

In respect of client under 360 degree financial planning the IA has not provided adequate disclosures as prescribed in the regulations related to material facts relating to the key features of the products class advised particularly, performance track record and failed to draw the client's attention to the warnings relating to an investment product class which it is recommending to the client.

The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:

In respect of client under 360 degree financial planning the IA has not provided adequate disclosures as prescribed in the regulations related to material facts relating to the key features of the products class advised particularly, performance track record and failed to draw the client's attention to the warnings relating to an investment product class which it is recommending to the client.

The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

*7.5.1. The entity vide point 30 of PIQ provided copies of terms and conditions as displayed on their website Bharosa Club and on Smallcase platform (****Annexure-10****). Further the entity provided all the records in respect of one client under 360 degree financial planning (****Annexure-11****)*

SEBI Observations:

*7.5.2. In respect of one client under 360 degree financial planning the entity has not provided adequate disclosures related to material facts relating to the key features of the products class advised (e-mail advising the client is at **Annexure-12**) particularly, performance track record and failed to draw the client's attention to the warnings relating to an investment product class which it is recommending to the client.*

Violations alleged:

With respect to Noticee 1:

Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2:

Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:

Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:

Therefore, it is alleged that the Noticee has violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

7.6. ***Non-maintenance of records-***

With respect to Noticee 1:

The entity has not done and maintained records of KYC. The entity has not undertaken and maintained records of risk profiling and risk assessment of its clients. The entity has not recorded rationales for the advices given. The entity has also not conducted the yearly audit.

With respect to Noticee 2:

The IA has not done and maintained records of KYC. The IA has not undertaken and maintained records of risk profiling and risk assessment of its clients. The IA has not recorded rationales for the advices given. The entity has also not conducted the yearly audit.

The entity being Director and representative is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:

The IA has not done and maintained records of KYC. The IA has not undertaken and maintained records of risk profiling and risk assessment of its clients. The IA has not recorded rationales for the advices given. The IA has also not conducted the yearly audit.

The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:

The IA has not done and maintained records of KYC. The IA has not undertaken and maintained records of risk profiling and risk assessment of its clients. The IA has not recorded rationales for the advices given. The IA has also not conducted the yearly audit.

The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

7.6.1. Regulation 19 (1) of SEBI IA regulation, 2013 states that that an IA shall maintain the records of KYC, Risk profiling and risk assessment, suitability assessment, copies of agreement, investment advice provided, rationale for arriving at investment advice and a register of its clients capturing relevant details.

Regulation 19 (3) states that an investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India.

7.6.2. The entity has three types of clients, submissions of the entity in respect of each are as follows-

For records of KYC-
*7.6.3. The entity vide point 12 of PIQ submitted that it has not obtained any KRA and CKYC registration. Under point 18.8 of the PIQ at page 69, the entity submitted details related to KYC procedures that the clients taking general advice and using their tools they do not do KYC, if the clients do transaction through them they rely on KYC done by MFU using CAN number given by MFU and for the clients using their product on Smallcase portal, Smallcase technologies performs the KYC. The entity has also enrolled one client under 360 degree financial plan and for the same, the entity on the day of inspection provided screenshots of KYC details (**Annexure-13**) as obtained using CAN number given by MFU.*

For records of risk profiling/risk assessment/suitability assessment-
7.6.4. The entity vide point 18 of PIQ has submitted that for clients taking general advice, risk profiling and suitability assessment is unnecessary, there are 138 such clients out of total 187 clients.

7.6.5. For 48 clients who have subscribed for entity's services through Smallcase, entity on the day of inspection has submitted that risk profiling of such customers' are performed by Smallcase. After risk profiling is done the customer has access to the advice of the entity without their intervention or review. The data related to risk profile and KYC is maintained at Small case and is available to entity upon request.

7.6.6. For one client who has taken advisory under 360 degree financial plan of the entity the entity has provided a copy of risk profiler sent to him vide email however, the responses of the client is not provided.

For records of advice-
*7.6.7. The entity has provided client register with details viz. Name, email, Mobile, PAN and AUM (**Annexure-14**). Further in respect of smallcase clients the details of product subscribed also provided. In respect of one client under 360 degree planning the entity has submitted relevant mail in respect of advice given to the client (**Annexure-15**)*

For records of rationale-
*7.6.8. The entity has not provided any record of rationale for client under general advisory and under 360 degree financial plan. For clients subscribing the entity's advice on small case the entity has shared the composition of their bucket of stocks recommended on the platform (**Annexure-16**), however, no rationale viz. selection of specific stocks and assigning specific weights to the selected stocks etc. is recorded.*

For yearly audit-
7.6.9. The entity vide point 33 of the PIQ has submitted that no audit was done. Further, the entity on the day of inspection has submitted that their activities under general advisory are not governed under SEBI regulations and for clients subscribing their services through Smallcase platform compliance activities are handled by Smallcase. In this regard irrespective of the entity's notion about its business model entity should have undertaken the yearly audit in the requisite manner.

SEBI Observations:
7.6.10. The entity has not done and maintained any records of KYC and is dependent on MFU and Smallcase for the same. The entity has not undertaken and maintained records of risk profiling of 186 out of 187 clients. The entity has not recorded rationales for the advices given. The entity has also not conducted the yearly audit.

Violations alleged:

With respect to Noticee 1:
Therefore, it is alleged that Noticee has violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2:
Therefore, it is alleged that Noticee has violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:
Therefore, it is alleged that Noticee has violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:
Therefore, it is alleged that Noticee has violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

*7.7. __**Failure to obtain SCORES registration and displaying the information in respect of status of complaints on website-**__*

With respect to Noticee 1:
The entity failed to obtain SCORES registration and display the information in respect of status of complaints on its website as mandated by SEBI.

With respect to Noticee 2:

a. The IA has failed to obtain SCORES registration.
b. The IA has failed to display the information in respect of status of complaints on its website as mandated by SEBI.
The entity being Director and representative is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:
a. The IA failed to obtain SCORES registration.
b. The IA has failed to display the information in respect of status of complaints on its website as mandated by SEBI.
The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:
a. The IA failed to obtain SCORES registration.
b. The IA has failed to display the information in respect of status of complaints on its website as mandated by SEBI.
The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

7.7.1. SEBI vide Circular No. CIR/OIAE/1/2014 dated December 18, 2014 directed, inter alia, all SEBI registered intermediaries (excluding Stock Brokers, Sub-Brokers and Depository Participants) to immediately obtain SCORES authentication and to take immediate efforts on receipt of a complaint through SCORES, for its resolution, within thirty days. Regulation 21(1) states that an investment adviser shall redress client grievances promptly and 21 (2) states that an investment adviser shall have adequate procedure for expeditious grievance redressal. SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019, all IAs shall display the information in respect of status of complaints in a prescribed format on the homepage (without scrolling) of their website/mobile app.

*7.7.2. The entity vide point 36 of pre-inspection questionnaire submitted that it do not have a SCORES registration. Further on the day of inspection, the entity submitted they had neglected to register with SCORES. (copy of relevant submissions made by the IA on the day of inspection in this regard are placed at **Annexure-6).***

*7.7.3. As checked from SCORES portal, no complaint is found to be registered against the entity during the inspection period (copy of relevant extract of SCORES is at **Annexure-17**).*

*7.7.4. Upon perusal of Homepage of the website of the entity, the said information in respect of the status complaints is not found (copy of extract of homepage of website www.bharosaclub.com is placed at **Annexure-18**)*

***SEBI Observations**:*
7.7.5. The entity has failed to obtain SCORES registration and display the information in respect of status of complaints on its website as mandated by SEBI.

Violations alleged:

With respect to Noticee 1:
Therefore, it is alleged that the Noticee by not obtaining SCORES authentication, the Noticee has violated clauses 5,7, 14 and 16 of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and by not displaying the information in respect of status of complaints on its website, the Noticee has violated the provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2

a. Therefore, it is alleged that the Noticee has violated clauses 5, 7, 14 and 16 of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

b. Further, it is alleged that the Noticee has violated the provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:

a. Therefore, it is alleged that the Noticee has violated clauses 5, 7, 14 and 16 of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

b. Further, it is alleged that the Noticee has violated the provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:

a. Therefore, it is alleged that the Noticee has violated clauses 5, 7, 14 and 16 of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

b. Further, it is alleged that the Noticee has violated the provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

7.8. ***Failure to provide execution services through a subsidiary/separately identifiable department and making it obligatory for its clients to take execution services-***

With respect to Noticee 1:

The entity failed to provide execution services through a subsidiary/separately identifiable department and failed to segregate the services provided by it.

Further, the entity through its associate Smallcase made it obligatory for its clients to take execution services of partner brokers of Smallcase in order to subscribe the entity's services.

With respect to Noticee 2:

The IA failed to provide execution services through a subsidiary/separately identifiable department and failed to segregate the services provided by it.

Further, the IA through its associate Smallcase made it obligatory for its clients to take execution services of partner brokers of Smallcase in order to subscribe the IA's services.

The entity being Director and representative is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:

The IA failed to provide execution services through a subsidiary/separately identifiable department and failed to segregate the services provided by it.

Further, the IA through its associate Smallcase made it obligatory for its clients to take execution services of partner brokers of Smallcase in order to subscribe the IA's services.

The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:

The IA failed to provide execution services through a subsidiary/separately identifiable department and failed to segregate the services provided by it.

Further, the IA through its associate Smallcase made it obligatory for its clients to take execution services of partner brokers of Smallcase in order to subscribe the IA's services.

The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

7.8.1. Regulation 22 of IA Regulations, 2013-Investment advisers which are banks, NBFCs and body corporate providing distribution or execution services to their clients shall keep their investment advisory services segregated from such activities:
Provided that such distribution or execution services can only be offered subject to the following:
(a) The client shall not be under any obligation to avail the distribution or execution services offered by the investment adviser.
(b) The investment adviser shall maintain arm's length relationship between its activities as investment adviser and distribution or execution services.

*7.8.2. The entity has submitted vide point 9 of the PIQ that they have two active people in the company. The entity vide points 27, 28 and 29 submitted that they provide free of cost execution services to their clients and keep such services segregated from their clients under 360 degree plan. In respect of the samples document for recorded rationale and correspondence with clients, the entity submitted an email written to one of its clients in which the query related to execution services are answered from email advisory@bharosaclub.com.The entity vide point 20 of PIQ (**Annexure-4)** submitted that the same email is used for providing written advice.*

*7.8.3. The entity also offers one of its services through small case platform. From the help section of the entity's page on the said platform it is noted that in order to subscribe to the entity's product the clients need to be a client of the partner brokers of Smallcase. (copy of relevant extract in this regard is at **Annexure-19**)*

SEBI Observations:
7.8.4. The entity is run by two people without any division of departments, further, it uses the same email for providing advisory services and execution services, hence it is noted that the entity failed to provide execution services through a subsidiary/separately identifiable department. Further, the entity through its associate Smallcase made it obligatory for its clients to take execution services of partner brokers of Smallcase in order to subscribe the entity's service.

Violations alleged:

With respect to Noticee 1:
Therefore, it is alleged that Noticee has violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2:
Therefore, it is alleged that Noticee has violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:
Therefore, it is alleged that Noticee has violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:
Therefore, it is alleged that Noticee has violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

7.9. ***Not doing KYC of clients and outsourcing this core compliance function of performing KYC to MFU and smallcase-***

With respect to Noticee 1:
The entity has not done KYC of clients and outsourced this core compliance function to MFU and smallcase.

With respect to Noticee 2:
The IA has not done KYC of clients and outsourced this core compliance function to MFU and smallcase.
The entity being Director and representative is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:
The IA has not done KYC of clients and outsourced this core compliance function to MFU and smallcase.
The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:
The IA has not done KYC of clients and outsourced this core compliance function to MFU and smallcase.
The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

7.9.1. Regulation 15 (8) of SEBI IA regulations, 2013, SEBI circulars no. CIR/MIRSD/16/2011 dated August 22, 2011 and MIRSD/SE/Cir-21/2011 dated October 5, 2011 on uniform Know Your Client ('KYC') norms and provisions as laid down under the Prevention of Money-Laundering Act, 2002, Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, SEBI Master Circular on Anti Money Laundering (AML) dated October 15, 2019 and relevant KYC / AML circulars issued from time to time.

*7.9.2. The entity vide point 12 of PIQ submitted that it has not obtained any KRA and CKYC registration. Under point 18.8 of the PIQ (**Annexure-4**), the entity submitted details related to KYC procedures that the clients taking general advice and using their tools they do not do KYC, if the clients do transaction through them they rely on KYC done by MFU using CAN number given by MFU and for the clients using their product on Smallcase portal, Smallcase technologies performs the KYC. The entity has also enrolled one client under 360 degree financial plan and for the same, the entity on the day of inspection provided screenshots (**Annexure-13**) as obtained using CAN number given by MFU.*

SEBI Observations:
7.9.3. It is observed that the entity does not do KYC of their clients, further, the entity has outsourced a core compliance function of performing KYC to MFU and Smallcase Technologies.

Violations alleged:

With respect to Noticee 1:
Therefore, it is alleged that the Noticee has violated Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the provisions of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.
With respect to Noticee 2:
Therefore, it is alleged that the Noticee has violated Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:
Therefore, it is alleged that the Noticee has violated Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:
Therefore, it is alleged that the Noticee has violated Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

7.10. ***Not adopting any procedures/written procedures to implement the anti-money laundering provisions as envisaged under the PMLA and outsourcing the same-***

With respect to Noticee 1:
The entity has failed to adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, further, the entity outsourced the same to MFU and Smallcase Technologies.

With respect to Noticee 2:
The IA failed to adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, further, the IA outsourced the same to MFU and Smallcase Technologies.
The entity being Director and representative is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:
The IA has failed to adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, further, the IA outsourced the same to MFU and Smallcase Technologies.
The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:
The IA failed to adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, further, the entity outsourced the same to MFU and Smallcase Technologies.

The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

In this regard the following was inter alia observed and/or alleged:

7.10.1. SEBI has prescribed AML and CFT requirements via Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06, dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019 which provide Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under. Under section 2 of the said master circular each registered intermediary shall adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA.

7.10.2. With regard to above, the entity vide points 39 and 40 of pre-inspection questionnaire at page 65 submitted that the compliance requirements for AML are handled by MFU and Smallcase Technologies for them and they do not take any cash / demand drafts as payment.

*7.10.3. Further the entity during the day of inspection, submitted that their core activities (except for one small test customer – details of which have been shared in our 360 degree plan details) are not governed under the SEBI regulations as they come under the General Advice category. It is not required for our core business and handled through Smallcase for the rest of the business. (copy of relevant submissions made by the IA on the day of inspection in this regard are at **Annexure-6**).*

SEBI Observations:
7.10.4. As per the provisions of SEBI circulars as mentioned above, irrespective of their business model the entity should have adopted written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, however, the entity failed to do so, further, the entity outsourced a core compliance function of maintaining AML standards to MFU and Smallcase Technologies.

Violations alleged:

With respect to Noticee 1:
Therefore, it is alleged that Noticee has violated all the provisions of following SEBI Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06, dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, CIR/MIRSD/24/2011 dated December 15, 2011, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2:
Therefore, it is alleged that Noticee has violated all the clauses of following SEBI Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06, dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, CIR/MIRSD/24/2011 dated December 15, 2011, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:
Therefore, it is alleged that Noticee has violated all the clauses of following SEBI Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06, dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, CIR/MIRSD/24/2011 dated December 15, 2011, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:
Therefore, it is alleged that Noticee has violated all the clauses of following SEBI Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06, dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, CIR/MIRSD/24/2011 dated December 15, 2011, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

….”

6. The SCN was issued to the Noticees by Speed Post Acknowledgement Due (SPAD) and also through Email dated August 14, 2023.

7. Vide email dated August 28, 2023, Noticee 1, 2 and 3 sought extension of four weeks of time to file reply to the SCN. Vide email dated August 31, 2023, the aforesaid Noticees were advised to submit their response to the SCN within the timelines provided in the SCN. Noticees submitted their common reply to the SCN vide their letter dated September 05, 2023.

8. Thereafter, vide letter dated September 08, 2023 and digitally signed email dated September 08, 2023, Noticees were provided opportunity of hearing on September 15, 2023. Vide email dated September 13, 2023, Noticees sought adjournment of the said hearing and accordingly, vide email dated September 18, 2023, the said hearing was re-scheduled to September 21, 2023.

9. On the scheduled date of hearing viz., September 21, 2023, all the Noticees appeared through their common Authorised Representatives (ARs), Mr. Kamaljeet Singh (Advocate), Mr. Moksha Bhatt (Advocate), Mr. Lakshya Khanna (Advocate) and Ms. Mriganki Nagpal (Advocate) for the hearing held through online mode viz., video conferencing. During the hearing, Noticees relied upon and reiterated the submissions made by them *vide* letter /email dated September 05, 2023 and inter alia sought time for making additional submissions and accordingly time till September 28, 2023 was allowed for the same. Noticees made their common additional submissions to the SCN vide letter and email dated September 28, 2023.

10. The key submissions /additional submissions made by the Noticees *vide* letter dated September 05, 2023 and September 28, 2023 respectively, as their replies to the SCN, are brought out as hereunder:

Submissions of Noticees dated September 05, 2023 are as under:

"

…..

PRELIMINARY OBJECTIONS

1. *At the outset and without prejudice to the rights of the Noticces in law, it is submitted that the assertions/contentions made by the Securities and Exchange Board of India ("**SEBI**") in SCN dated 11.08.2023 qua the purported investment advice given by the Noticees, are based on a complete misapplication of law and are devoid of any merit. The SCN proceeds on a false and frivolous premise that BTPL has provided investment advice without complying with the IA Regulations.*

2. *To be clear, it is submitted that during the Inspection Period, BTPL was operating a website www.bharosaclub.com, wherein BTPL provided general information on mutual fund investments, analytical/ comparison tools and news articles to its subscribers. In addition, BTPL published model portfolios on the smallcase platform, which was available to the public at large. At this juncture, it is pertinent to refer to the definition of the "investment advice" as per the SEBI (Investment Advisers) Regulations, 2013 ("**IA Regulations**") as provided in Regulation 2 of the IA Regulations. The proviso to the definition clearly provides that any advice/information given through electronic medium which is made widely available to the public shall be excluded from the scope of being an investment advice (**"Public Media Exemption"**). Therefore, it is abundantly clear that the aforesaid activities do not constitute investment advice. Hence, in absence of any investment advice rendered by BTPL, it is submitted that the assertions made in the SCN are misplaced and contrary to unambiguous terms as provided in the IA Regulations.*

3. *It is pertinent to highlight that while BTPL is also registered as an Investment Adviser, it has not per se provided any investment advice to any person and in fact did not have any clients for investment advisory services during the Inspection Period. It is further submitted that since BTPL has no advisory clients, the question of providing execution/ facilitation services to any such clients does not arise.*

4. *Before responding to the assertions, the Noticees are setting out the brief background of the present matter hereinbelow:*

BACKGROUND

A. *Noticee 1/ BTPL is a private limited company incorporated on 22.05.2015 under the provisions of the Companies Act, 2013, having its registered office at Flat No. 401, Aradhana Colony Sector-13, R K Puram, Ring Road New Delhi, South West Delhi-110066. BTPL is a registered IA with the SEBI having Registration No. INA100004657. Noticee 2 is presently the director of BTPL and has only become a director as recently on 20.05.2023. Noticee 3 is presently working as the CEO and director of BTPL, who also became a CEO and director on 15.02.2020. Noticee 4 is currently the compliance officer and has been a director of BTPL since 22.05.2015.*

B. *During the inspection period i.e. 1 April 2019 to 31 March 2020, BTPL was engaged in the following businesses:*

   i. ***Bharosa Website**: BTPL operated a website www.bharosaclub.com ("**Bharosa Website**"), wherein BTPL provided its users with general information on mutual fund investments, analytical/ comparison tools and news articles to its subscribers. Contrary to what has been alleged in the SCN, BTPL via the Bharosa Website does not provide any investment advice. The core product was the Bharosa Club Membership, which was priced at Rs. 1000 + GST for a one year membership. The membership included:*
      - *Access to general learning content (written and video), which aimed to increase financial know-how and literacy. The content was generic and does not tell people "what to do" but how to understand key financial concepts. BTPL also provided research notes on a variety of topics that serve to showcase how members can think through various topical financial issues themselves.*
      - *Access to comparison tools. These tools help the members to easily compare the performance of various investment options at their disposal in an easy to understand manner. BTPL did not provide any advice whatsoever but instead allowed members to make better decisions by presenting them easy to understand data. These tools were widely available to the general public.*
      - *Model portfolios. BTPL provide illustrative model portfolios that provide its general information on funds that have performed well. This information was widely available to the general public. The content mentioned is general in nature.*
      - *Research Notes. BTPL also provide research notes on a variety of topics that serve to showcase how members can think through various topical financial issues themselves. Past topics have included: how to manage safe money through the covid crisis, how to analyze a stock using top-down techniques, how Operation Twist impacts debt portfolios, etc. BTPL's content is very clear that the goal is not on telling members what to do, but giving them a framework for how to do their own thinking on these issues.*

   ii. ***Small Case**: BTPL had executed a Business Partnership agreement dated 05.08.2019 ("**Agreement**") with Smallcase Technologies Private Limited ("**Smallcase**") in terms of which, Smallcase provides various services to BTPL including, but not limited to provision of technology, back- end infrastructure for the investment platform(s), back office services, website management, and collection of information and payments from clients. In terms of the Agreement, it is abundantly clear that BTPL is only publishing model portfolios on the Smallcase platform, which is available to the public at large. It was not involved in any execution/ facilitation services. BTPL is merely a publisher, and its users subscribe to its services to track the model portfolios published by it on the Smallcase platform.*
   *A copy of the Business Partnership agreement dated 05.08.2019 is annexed herewith as **Annexure 1**.*

   iii. ***360 Degree Financial Plan:** BTPL had contemplated to launch a 360 degree Financial Plan with the intent of providing advisory services to its customers. However, this service was not launched. Notwithstanding the aforesaid and without prejudice to the rights available to the Noticees under law, it is submitted that BTPL sought to provide advice to Mr. G. Rxxxxxxn. However, as the client did not provide the requisite information, no investment advisory services were provided. Further, the engagement was terminated on amicable terms. BTPL* *was initially contemplating launching the 360 degree Financial Plan to its Platform, however, BTPL decided against launching the same. Therefore, as on date, there is no such advisory services being rendered.*

C. *SEBI conducted an inspection of BTPL for the period of 01.04.2019 to 31.03.2020 ("**Inspection Period**"). During the inspection, SEBI requested the Noticees to provide the information necessary for the inspection. It is a matter of fact, that the Noticees have promptly responded to and provided SEBI with all the necessary information, and have thus, satisfactorily cooperated with SEBI throughout the Inspection Period.*

D. *Pursuant thereto, upon the completion of its inspection, SEBI communicated its findings to BTPL as mentioned in its letter dated 02.07.2021 vide its email dated 05.07.2021. Upon receipt of the aforesaid letter, BTPL promptly submitted its response vide letter dated 12.07.2021.*

E. *Subsequently, SEBI issued a SCN dated 11.08.2023 which was received by the Noticees on 14.08.2023, under Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 alleging violations of various provisions of the SEBI Act, 1992, IA Regulations, and SEBI Circulars. The SCN directed the Noticees to submit their reply to the SCN within 14 days from the date of receipt of the SCN and alternatively, provided an option to the Noticees to opt for the settlement process with a prompt intimation to SEBI.*

F. *Accordingly, the Noticees responded to the SCN vide its letter dated 25.08.2023 and requested SEBI for extension of time in view of the voluminous record and also indicated their inclination to opt for the settlement process.*

G. *In view of the aforesaid, the Noticees are hereby giving their response to the SCN.*

RESPONSE TO THE ASSERTIONS AND CONTENTIONS AS MADE BY SEBI IN THE SCN

SEBI vide the SCN has made the following assertions and contentions against the Noticees, which are being responded to and dealt with hereinbelow:

7.1 Using payment gateway mechanism to receive fees:

With respect to Noticee 1:
The entity has accepted fees for providing investment advice through payment gateway mechanism and accordingly, the entity has violated the provisions of relevant SEBI circular barring /As from receiving fees through payment gateways.

With respect to Noticee 2:
The IA has accepted fees for providing investment advice through payment gateway mechanism and accordingly, has violated the provisions of relevant SEBI circular barring /As from receiving fees through payment gateways. The entity being Director and representative is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:
The IA has accepted fees for providing investment advice through payment gateway mechanism and accordingly, the IA has violated the provisions of relevant SEBI circular barring /As from receiving fees through payment gateways. The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:
The Investment Adviser has accepted fees for providing investment advice through payment gateway mechanism and accordingly, it has violated the provisions of relevant SEBI circular barring /As from receiving fees through payment gateways. The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

RESPONSE TO 7.1:

A. *SEBI has asserted that the Noticees have violated the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27.12.2019 read with Regulation 13(a) and Clauses 8 and 9 of the Code of Conduct as specified in Third Schedule under Regulation 15(9) of IA Regulations. The aforesaid Circular states that the IAs shall accept fees strictly by account payee crossed cheques/ demand draft or by way of direct credit into their bank account through NEFT/ RTGS/ IMPS/ UPI and not through any payment gateway.*

B. *Clearly, it appears that response given by BTPL to the said contentions vide the Pre-Inspection Questionnaire has been completely misunderstood. It is submitted that the services provided by the Noticees during the Inspection Period do not fall within the purview of the definition of 'Investment Advise' as defined in the IA Regulations as demonstrated below. Therefore, the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27.12.2019, violation of which has been alleged in the SCN by SEBI, is not applicable to the Noticees and thus, the Noticees are not in violation of the same.*

C. *In this regard, it is submitted that Regulation 2 (l) of the IA Regulation defines the term 'Investment Advice' as follows:*

> *"(l) "investment advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:*
> *Provided that <u>investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;"</u>*

D. *Without prejudice to the aforesaid, it is submitted that the payments received by BTPL via Razorpay pertains to subscription fees for the Bharosa Club Website, **which is not in the nature of consideration for investment advice**. This information provided on the Bharosa Club Website falls within the ambit of Public Media Exemption and would not constitute investment advice. Therefore, since the same does not constitute investment advice, there is no bar on BTPL from receiving subscription money from users via payment gateway for the limited purpose of accessing information available on the Bharosa Club website.*

E. *In any event, as on date, BTPL does not accept any payment via a payment gateway.*

F. *We therefore submit that the services provided by the Noticees do not fall within the purview of 'Investment Advise' as defined in the IA Regulations and hence, the Noticees are in no manner whatsoever either in breach or in violation of the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27.12.2019.*

7.2 Not informing SEBI about material changes and Not taking prior approval for change in control:

With respect to Noticee 1:

a. *That the Noticee by not informing SEBI about material changes in shareholding pattern, the entity has violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.*
b. *By not-cooperating with the inspection team by submitting false information in respect of change in control and material changes in information already submitted to SEBI and by not taking approval for change in control, the entity has violated Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.*

With respect to Noticee 2:

a. *It That the Noticee has violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*
b. *That the Noticee has violated Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*

With respect to Noticee 3:

a. *That the Noticee has violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*
b. *That the Noticee has violated Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*

With respect to Noticee 4:

a. *That the Noticee has violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI {Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*
b. *That the Noticee has violated Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*

RESPONSE TO 7.2:

A. *SEBI has observed that the Noticees have failed to inform SEBI about material changes in shareholding pattern of BTPL and has further allegedly failed to take prior approval for change in control as mandated by Regulation 13(a), 13(b), 15(11) and Clauses 8 and 9 of the Code of Conduct as specified in Third Schedule under Regulation 15(9) of the IA Regulations.*

Material change in information:

B. *It is submitted that the Regulation 13 (b) of the IA Regulations states that "the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;".*

***Intimation for Change of Compliance Officer and Advisors**:*

C. *In this regard, it is submitted that vide communication dated 15 July 2017, BTPL had in terms of Regulation 13 (b) of the IA Regulations, promptly informed SEBI about the change in compliance officer from Mr. Prakash Purushottam Pai to Mr. Kamal Manocha and addition of new advisors namely Mr. Kamal Manocha and Mr. Rahul Goyal. Vide another* *communication dated 15 July 2017, BTPL had also informed SEBI about the update of correspondence address of business place and change of authorised person details to #301 & #303, 3rd floor, DLF City Court, MG Road, Near Sikanderpur Metro Station, Gurgaon-122002, Haryana.*

*A copy of the communication dated 15 July 2017 is annexed herewith as **Annexure 2**.*

***<u>Intimation for Change of CEO and Compliance Officer</u>**:*

D. *BTPL vide email dated 20.02.2020 had inter alia informed SEBI about the appointment of Noticee 3 as Chairman and CEO of BTPL effective from 15 February 2020 and Ms Anita Bhargava as their Compliance Officer. Therefore, evidently, the Noticees had duly informed SEBI of all material changes that have happened and hence, there is no violation of Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992 as falsely alleged by SEBI in the SCN.*

   *A copy of the communication dated 20 February 2020 is annexed herewith as **Annexure 3**.*

E. *Clearly, it appears that BTPL's response vide the Pre-Inspection Questionnaire has been misunderstood, as the Noticees had duly informed the SEBI about any changes in the material information and were in substantial compliance with the IA Regulations.*

<u>No Change in Control:</u>

F. *It is submitted that there has not been any change of control in BTPL. BTPL was jointly controlled by Noticee 2, 3 and 4 and it remains to be jointly controlled by Noticee 2, 3 and 4. Clearly, BTPL was under control of Mr. Sanjay Bhargava and his immediate family. The information pertaining to the change in shareholding is clearly reflected in the records of SEBI. Pertinently, the transfer of shareholding was in the nature of intra family arrangement and thus, there is no change of control in BTPL. A perusal of the shareholding pattern as on 31.03.2019 and 31.03.2020 will show that that Noticee 2, 3 and 4 collectively held 80.43% shareholding as on 31.03.2019 and 85.09% as on 31.03.2020. Evidently, BTPL has during this time been jointly owned and controlled by the Noticee 2, 3 and 4. Thus, there has been no change of control.*
   *A copy of the extract of the Shareholding pattern of BTPL from the financial statement for the year ending 31.03.2020 is annexed herewith as **Annexure 4**.*

G. *Evidently, the aforesaid intra family transfer of shares of BTPL was duly informed to SEBI by the Noticee 3 vide his email dated 25.11.2020. Therefore, the assertion that the Noticees did not inform SEBI about the change in shareholding is factually incorrect. A copy of the email dated 25.11.2020 is annexed hereto and marked as **Annexure 5**.*

H. *In this regard, reliance is placed on Regulation 1 (a) of the SEBI/HO/MIRSD/DOR/CIR/P/2021/42 dated 25.03.2021 which states that "Transfer of shareholding among immediate relatives shall not result into change in control. Immediate relative shall be construed as defined under Regulation 2(l) of SEBI SAST Regulations which inter-alia includes any spouse of that person, or any parent, brother, sister or child of the person or of the spouse."*

I. *The said regulations are binding on all intermediaries. Since, BTPL is an intermediary as defined in Section 2(g) of **The SEBI (Intermediaries) Regulations, 2008** as:*

   "g) "intermediary" means a person mentioned in clauses (b) and (ba) of sub-section (2) of section 11 and sub-section (1) and (1A) of section 12 of the Act and includes an asset management company in relation to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, a clearing member of a clearing corporation or clearing house, foreign portfolio investors and a trading member of a derivative segment [or currency derivatives segment] of a stock exchange but does not include foreign venture capital investor, mutual fund, collective investment scheme and venture capital fund;"
   Section 11(2)(b) and (ba) and 12(1) and (1A) of the SEBI Act is as follows:
   "(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;
   (ba) registering and regulating the working of the depositories, [participants,] custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;]
   ….
   12. (1) No stock-broker, sub- broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the [regulations] made under this Act:
   Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock- broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.
   [Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.
   (1A) No depository, [participant,] custodian of securities, foreign institutional investor, credit rating agency or any

other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:"
From the abovementioned provisions it is evident that the said regulation is applicable on BTPL as well.

J. *Therefore, there has been no change in control at BTPL and hence, there was no requirement for BTPL to inform or take prior consent of the SEBI. Thus, the assertion that BTPL by not taking approval for change in control has violated Regulations 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of the IA Regulations is completely unfounded and factually incorrect.*

<u>Purportedly providing false information during inspection</u>:

K. *The Noticees have, during the Inspection Period, provided full cooperation and support to the SEBI, as and when asked for by SEBI. The aforesaid facts can be established from the emails dated 24.11.2020, 25.11.2020, 15.01.2021 and 28.01.2021 wherein it can be seen that the Noticees have not only provided the SEBI with all the information but have also been fully transparent about the functioning of BTPL with the inspection team. Therefore, any assertion that the Noticees were not-cooperating with the inspection team by submitting false information in this regard are completely unfounded and cannot be sustained.*
*Copies of the emails dated 24.11.2020, 25.11.2020, 15.01.2021 and 28.01.2021 are annexed herewith as **Annexure 6 (Colly)**.*

<u>7.3 Not performing the risk profiling in the requisite manner and outsourcing the same:</u>

<u>With respect to Noticee 1:</u>

That the Noticee 1 has violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.

<u>With respect to Noticee 2:</u>

That the Noticee 2 has violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

<u>With respect to Noticee 3:</u>

That the Noticee 3 has violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/2412011 dated December 15, 2011 r/w Section 27 of the SEB/ Act, 1992.

<u>With respect to Noticee 4:</u>

That the Noticee 4 has violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular C/R/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEB/ Act, 1992.

RESPONSE TO 7.3:

A. *As stated hereinabove, the information provided by the Noticees to its members on the Bharosa Club Website, Smallcase platform and 360 degree Financial Plan during the Inspection Period does not fall within the purview of 'Investment Advice' as defined under the IA Regulations (please refer to response to 7.1).*

B. *Regulation 16 of the IA Regulations mandates that the 'Investment Adviser' shall ensure that it obtains certain information from the clients while giving Investment Advice for risk profiling purposes. However, since the information given by the Noticees on the Platform during the Inspection Period, does not fall within the purview of 'Investment Advice', the said regulation is not applicable to BTPL and there was no requirement for BTPL to mandatorily carry out the risk profiling.*

C. *Further, it is respectfully submitted that the observation that "the clients of the entity taking its Bharosa Club services are indeed getting investment advice to invest/ deal in securities" is completely incorrect in light of the Public Media Exemption, which squarely applies here.*

D. *As far as the risk profiling of the users performed by Smallcase is concerned, it is submitted that the role of the Noticees is only limited to publishing information on the Smallcase platform, which is squarely covered under the Public Media Exemption. It is respectfully submitted that for any other details pertaining to how the transactions are being facilitated/ executed on the Smallcase platform can be obtained from Smallcase directly. It is specifically denied that BTPL has outsourced risk profiling with respect to investment advisory services to Smallcase.*

E. *In fact, there are several other entities who are providing the same or similar type of services pertaining to publishing model portfolios or other information related to the financial markets on several platforms. For instance, Money Control also publishes information pertaining to the financial markets on its platform, and the same is not construed as investment advice.*

F. *Even with respect to the one client who had taken the trial advisory services under the 360 degree Financial Plan, a copy of the risk profile questionnaire was provided to the said customer in terms of Regulation 16 of the IA Regulations. However, please refer to our response at Paragraph B of the Background hereinabove, and the same is not being repeated herein for the sake of brevity.*

G. *Therefore, in view of the aforesaid, it is evident that the assertion that the Noticees have violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of IA Regulations, and all the clauses of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011 are completely unfounded and cannot be sustained, as there is no non-compliance of the said regulations by the Noticees.*

7.4 Not performing the suitability assessment and outsourcing the same:

With respect to Noticee 1:

That Noticee has violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIRIMIRSD/24/2011 dated December 15, 2011.

With respect to Noticee 2:

That Noticee has violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIRIMIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:

That Noticee has violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIRIMIRSD/2412011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:

That Noticee has violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIRIMIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

RESPONSE TO 7.4:

A. *As stated hereinabove, the information provided by the Noticees to its members on the Bharosa Club Website, Smallcase platform and 360 degree Financial Plan during the Inspection Period does not fall within the purview of 'Investment Advice' as defined under the IA Regulations (please refer to response to 7.1 and 7.3).*

B. *There is no ambiguity that Regulation 17 of the IA Regulations mandates that the 'Investment Adviser' shall ensure that all investments on which Investment Advice is given is appropriate to the risk profile of the client. However, since the services provided by the Noticees on the Platform during the Inspection Period, do not fall within the purview of 'Investment Advice', the said regulation is not applicable to BTPL. Moreover, the user terms of Smallcase have clear disclaimers stating that a user-created Smallcase should not be construed as investment advice. It is submitted that even as per the Agreement, since the role of the Noticees is limited to publishing information on the Smallcase platform, any other details pertaining to how the transactions are being facilitated/ executed on the Smallcase platform ought to be obtained from Smallcase.*

C. *Notwithstanding the aforesaid and without prejudice to the rights and remedies of the Noticees, it is submitted that the risk profiling of customers availing Smallcase services is carried out by Smallcase. In fact, even with respect to the one client who had taken the trial advisory services under the 360 degree Financial Plan, a copy of the risk profile questionnaire was provided to the said customer in terms of Regulation 17 of the IA Regulations.*

   A copy of the risk profile questionnaire provided to the customer in the 360 degree financial plan is annexed herewith as ***Annexure 7****.*

D. *In view of the aforesaid, any assertion that the Noticees have violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of the IA Regulations, and all the clauses of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011 are completely unfounded and cannot be sustained, as there is no non-compliance of the said regulations by the Noticees.*

7.5 Not providing requisite disclosure:

With respect to Noticee 1:

That the Noticee has violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2:

That the Noticee has violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third

Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:

That the Noticee has violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:

That the Noticee has violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

RESPONSE TO 7.5:

A. *As stated hereinabove, the information provided by the Noticees to its members on the Bharosa Club Website, Smallcase platform and 360 degree Financial Plan during the Inspection Period does not fall within the purview of 'Investment Advice' as defined under the IA Regulations (please refer to response to 7.1 and Paragraph B (iii) of the Background).*

B. *Regulation 18(6) and 18(7) of the IA Regulations mandates that the 'Investment Adviser' while making 'Investment Advice' shall:*

> *"(6)An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.*
> *(7) An investment adviser shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it is recommending to the client."*

C. *However, since the services provided by the Noticees on the Platform during the Inspection Period, does not fall within the purview of 'Investment Advice', the said regulation is not applicable to BTPL.*

D. *Additionally it is submitted that the performance records of any products recommended to the customer are in the 'tools' section of the Noticees' membership website, of which the client was a member. Moreover, the advice given by the Noticees under 360 degree Financial Plan was a one-off test case and not an ongoing business for the Noticees.*

E. *Therefore, without prejudice to the rights available to the Noticees under law and notwithstanding the fact that the Noticees were never actively providing services to clients under the 360 degree Financial Plan, it is submitted that the Noticees had provided the requisite disclosures as per Regulation 18 (6) and (7) of IA Regulations, so there is no question of non-compliance.*

F. *Notwithstanding the aforesaid, it is submitted that the Noticee 3 only became a CEO and Director of BTPL on 15.02.2020, which was towards the end of the Inspection Period and Noticee 2 became a director of BTPL on 20.05.2023, much after the Inspection Period. Therefore, the assertions against the Noticee 2 and 3 in the SCN cannot be sustained.*

G. *In view of the aforesaid the contention that the Noticees have violated Regulations 13 (a), 18(6), 18 (7) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of the IA Regulations, and all the clauses of SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011 are completely unfounded and cannot be sustained, as there is no non-compliance of the said regulations by the Noticees.*

7.6 Non-maintenance of records:

With respect to Noticee 1:

That Noticee has violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2:

That Noticee has violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:

That Noticee has violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:

That Noticee has violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

RESPONSE TO 7.6:

A. It has been well established that the information provided by the Noticees to its members on the Bharosa Club Website, Smallcase platform and 360 degree Financial Plan during the Inspection Period does not fall within the purview of 'Investment Advice' as defined under the IA Regulations (please refer to response to 7.1).

For records of KYC:

B. It is submitted that the Noticees have not provided any investment advice to the users on the Bharosa Club Website and Smallcase platform. It is further submitted that BTPL only provides a link redirecting the users to the MFU for any transaction. Pertinently, the said link strictly pertains to transactions carried out by users on the MFU link. Therefore, it is clear that BTPL did not have any such users and they were not involved in any execution/ facilitation of transaction. Therefore, in the absence of users, there was no requirement for BTPL to keep or maintain any record or do KYC of users. We request you to refer to Paragraphs 2 and 3 of the Preliminary Objections, Paragraph B of the Background and Response to 7.1, which are not being repeated herein for the sake of brevity.

C. Notwithstanding the aforesaid, it is submitted that the Noticees have had CVLKRA registration since 2016 and have also registered with NDML. The Noticees have also started keeping records of KYC documents of all their Smallcase subscribers. Furthermore, the users of the Bharosa Club Website were using it to seek general information with no specific advice, therefore such records of members were not being kept.

For records of risk profiling/ risk assessment/ suitability assessment:

D. In reference to the response to the assertions pertaining to records of risk profiling/ risk assessment/ suitability assessment, it has already been demonstrated that the Noticees have complied with the requirements pertaining to risk profiling and suitability assessment in paragraphs 7.3 and 7.4 hereinabove. Additionally, even the record of rationale for the clients subscribing to the Smallcase services has been shared with SEBI. Therefore, there is no question of non compliance with the said regulations.

For records of advice

E. It is submitted that the Noticees have not provided any investment advice to the users on the Bharosa Club Website, Smallcase platform and 360 degree Financial Plan. With respect to Bharosa Club Website and Smallcase platform, it has already been established that BTPL has no users to whom any investment advice was given. It is submitted that the Noticees have duly provided the SEBI with the client register with the requisite details, including name, email, mobile, PAN etc. for the users of the Bharosa Club Website. It is submitted that even as per the Agreement, since the role of BTPL is limited to publishing information on the Smallcase platform, any other details pertaining to records of advice on the Smallcase platform can be obtained from Smallcase.

F. Even with respect to the 360 degree Financial Plan, it is established that there was only one user. In this regard, it is submitted that the relevant information with respect to the user of the 360 degree Financial Plan has duly been submitted to SEBI and is a part of the SEBI record. Therefore, all contentions in regard to not providing records of advice is completely unfounded and lacks merit.

For records of rationale:

G. It is submitted that the Noticees have not provided any investment advice to the users on the Bharosa Club Website, Smallcase platform and 360 degree Financial Plan. Therefore, there was no requirement for the Noticees to provide any record of rationale. Pertinently, the aforesaid assertion of not providing records of rationale is completely unfounded and lacks merit.

For yearly audit:

H. It is submitted that the audit was conducted on the following Financial Years:

i. Financial Year 2020-21
ii. Financial Year 2021-22
iii. Financial Year 2022-23

7.7 Failure to obtain SCORES registration and displaying the information in respect of status of complaints on website:

With respect to Noticee 1:

That the Noticee by not obtaining SCORES authentication, the Noticee has violated clauses 5, 7, 14 and 16 of SEBI Circular No. CIRIOIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and by not displaying the information in respect of status of complaints on its website, the Noticee has violated the provision of clause 1. (iv) of SEBI circular SEBIIHOIIMDIDF1/CIRIP/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2

a. That the Noticee has violated clauses 5, 7, 14 and 16 of SEBI Circular No. CIRIOIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

b. *That the Noticee has violated the provision of clause 1.(iv) of SEBI circular SEBIIHO/IMDIDF1/CIRIP/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*

With respect to Noticee 3:

a. *That the Noticee has violated clauses 5, 7, 14 and 16 of SEBI Circular No. CIRIOIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*

b. *That the Noticee has violated the provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF1/CIRIP/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*

With respect to Noticee 4:

a. *That the Noticee has violated clauses 5, 7, 14 and 16 of SEBI Circular No. CIRIOIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*

b. *That the Noticee has violated the provision of clause 1.(iv) of SEBI circular SEBIIHOIIMDIDF1/C/RIP/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.*

RESPONSE TO 7.7:

A. *It is submitted that Regulation 21(1) of the IA Regulations states that an IA shall redress client grievances promptly and 21(2) states that an IA shall have adequate procedure for expeditious grievance redressal, which was not allegedly followed by the Noticees.*

B. *With respect to the said contention, it is submitted that as soon as it was pointed out to the Noticees that the SCORES registration has not been obtained, the Noticees promptly acted on the same and obtained the SCORES registration. The said information is also displayed on the Bharosa Club Website. Notwithstanding the aforesaid, it is submitted that the purpose of having SCORES registration is to provide a platform for the aggrieved investors for redressal of their grievances. It is a matter of fact and record that no complaints have found to be registered against the Noticees during the Inspection Period. The aforesaid has been expressly admitted by the SEBI in Point 7.7.3 of the SCN.*

   *A copy of the application for SCORES registration filed by BTPL is annexed herewith as **Annexure 8**.*

C. *Therefore, as on date, the Noticees are in compliance with clauses 5, 7, 14 and 16 of SEBI Circular No. CIRIOIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of the IA Regulations r/w Section 27 of the SEBI Act, 1992.*

7.8 Failure to provide execution services through a subsidiary/separately identifiable department and making it obligatory for its clients to take execution services:

With respect to Noticee 1:

That Noticee has violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2:

That Noticee has violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses B and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:

That Noticee has violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:

That Noticee has violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

RESPONSE TO 7.8:

A. *As stated hereinabove, the information provided by the Noticees to its members on the Bharosa Club Website, Smallcase platform and 360 degree Financial Plan during the Inspection Period does not fall within the purview of 'Investment Advice' as defined under the IA Regulations (please refer to our detailed response to 7.1).*

B. *It is submitted that BTPL does not provide execution or facilitation services to any users. It is submitted that since the role of the Noticees is limited to publishing information on the Smallcase platform, any other details pertaining to how the transactions are being facilitated/ executed on the Smallcase platform can be obtained from Smallcase. Further, it is submitted that execution of its members' mutual fund transaction is done through MFU, and BTPL merely provides the link for the same. It is clarified that BTPL has no role with execution of any transaction with MFU and the users transacting on the said MFU link are the clients of MFU. Additionally, it is submitted that the Noticees are in no manner making it obligatory for their clients to take execution services of partner brokers of Smallcase. This is evident from the fact that the Noticees have no incentive, financial or otherwise, to promote the business of any of their partner brokers and the sole source of their fee comes directly from their customers. In fact, the customer also has lots of choice as Smallcase currently supports 12 large brokerages. Therefore, clearly the said contention is completely unfounded and devoid of any merit and thus, cannot be sustained.*

C. *Notwithstanding the aforesaid and without prejudice, with respect to the purported non-compliance with Regulations 13 (a), 15 (3), 15 (4) of the IA Regulations, it is pertinent to mention that the aforesaid regulations mandate an investment adviser to maintain an arms-length relationship and segregation between its investment advisory and other advisory. In this regard, it is crystal clear that the information provided by the Noticees to its members on the Platform during the Inspection Period does not fall within the purview of 'Investment Advice' as defined under the IA Regulations (please refer to response to 7.1).*

D. *In view of the aforesaid, it is evident that since no Investment Advice was given by the Noticees on the Platform during the Inspection Period, any observation/assertion of SEBI that the Noticees have not segregated the general advice and Investment Advice during the Inspection Period is completely devoid of any merit. Therefore, clearly, the Noticees have not been in non-compliance of the Regulations 13 (a), 15 (3), 15 (4) of the IA Regulations.*

7.9 Not doing KYC of clients and outsourcing this core compliance function of performing KYC to MFU and smallcase:

With respect to Noticee 1:

That the Noticee has violated Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the provisions of SEBI circular CIRIMIRSD/24/2011 dated December 15, 2011.

With respect to Noticee 2:

That the Noticee has violated Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIRIMIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 3:

That the Noticee has violated Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 4:

That the Noticee has violated Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

RESPONSE TO 7.9:

A. *It has been well established that the information provided by the Noticees to its members on the Bharosa Club Website, Smallcase platform and 360 degree Financial Plan during the Inspection Period does not fall within the purview of 'Investment Advice' as defined under the IA Regulations (please refer to response to 7.1).*

B. *Further, it is established that BTPL did not have any such users and they were not involved in any execution/ facilitation of transaction. Therefore, in the absence of any users, there was no requirement for BTPL to keep or maintain any record or do KYC of users. Furthermore, with respect to the alleged outsourcing of doing KYC to MFU and Smallcase, it is reiterated that the Noticees have no users to whom any investment advice is given on Smallcase platform or MFU, so the question of outsourcing any compliance function does not arise. Further, any client or users making any investment via Smallcase or MFU, is the client of Smallcase or MFU, and has nothing to do with BTPL. We request you to refer to Paragraphs 2 and 3 of the Preliminary Objections, Paragraph B of the Background and Response to 7.1 and 7.6, which are not being repeated herein for the sake of brevity.*

C. *It is further submitted that the Noticees, as on date, are registered with CKYC in terms of the Regulation 13 (a), 15 (8) of the IA Regulations and SEBI Circular CIR/MIRSD/24/2011 dated December 15, 2011. The Noticees have also kept records of KYC documents of all their Smallcase subscribers. Furthermore, the members of the Bharosa Club were using the Noticees' portal to seek general information with no specific advice, therefore such records of members were not being kept. Hence, the Noticees are in complete compliance with the abovementioned provisions and the Circular.*

7.10 Not adopting any procedures/written procedures to implement the anti- money laundering provisions as envisaged under the PMLA and outsourcing the same:

With respect to Noticee 1:

The entity has failed to adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, further, the entity outsourced the same to MFU and Smallcase Technologies.

With respect to Noticee 2:

The IA failed to adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, further, the IA outsourced the same to MFU and Smallcase Technologies. The entity being Director and representative is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 3:

The IA has failed to adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, further, the IA outsourced the same to MFU and Smallcase Technologies. The entity being Director and CEO is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

With respect to Noticee 4:

The IA failed to adopt written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, further, the entity outsourced the same to MFU and Smallcase Technologies. The entity being Director and Compliance Officer is among the senior management of the IA and accordingly, responsible for the said violations of the IA.

RESPONSE TO 7.10:

A. With respect to the said assertion, it is submitted that the Noticees, as on date, have adopted written procedures to implement the anti-money laundering provisions as envisaged under the PMLA.

The Noticees therefore submit that for the reasons stated hereinabove, it is clear that none of the assertions as made in the SCN are sustainable in the eyes of law and therefore, any enquiry in this regard against the Noticees will be contrary to the settled principles of law. The Noticees hereby expressly indicate their desire to have a personal hearing with respect to the captioned SCN in terms of the clause 11 of the SCN.

Submissions of Noticees dated September 28, 2023 are as under:

"….

I. BRIEF BACKGROUND OF THE NOTICEES:

1. ***Noticee 2:*** *Mr. Sanjay Bhargava is a highly regarded business leader in the fields of technology and finance. The Noticee 2 was one of the founding team members of PayPal along with Elon Musk. He has vast experience in the fields of banking and finance, having spent more than 18 years in various leadership positions at Citibank. He is an alumnus IIT Bombay and IIM Ahmedabad. The Noticee 2 returned to India from the United States of America around 2004 and has since been engaged in various endeavours to promote entrepreneurship and innovation in India. The Noticee 2 has started BTPL with the goal of making India an inclusive economic superpower.*

2. ***Noticee 3:*** *Mr. Sahil Bhargava, S/o Mr. Sanjay Bhargava (Noticee 2 herein) is the Chief Executive Officer at BTPL. A graduate of the University of Chicago, he has held various leadership positions in various leading financial services firms and private equity funds such as Bank of America Merril Lynch, Castanea Partners, Apollo Global Management LLC, Deep Field Asset Management LLC and APAC Financial Services Pvt. Ltd.*

3. ***Noticee 4:*** *Ms. Anita Bhargava, W/o Mr. Sanjay Bhargava (Noticee 2 herein), is the co- founder and the current compliance officer at BTPL. She is also a senior technology professional. The Noticee 4 previously headed the Data Warehousing Group at PayPal for nearly 5 years. Along with the Noticee 2, the Noticee 4 also returned to India from the United States of America around 2004 and has since been engaged in various endeavours to promote entrepreneurship and innovation in India. A copy of the identity cards of the Noticees are annexed herewith as* ***Annexure 1 (Colly)****.*

4. *The Noticee 2 and Noticee 4 were the shareholders and directors of BTPL during the inspection period. However, the Noticee 3 was only a shareholder at the beginning of the inspection period and became a CEO & director of BTPL only towards the end of the inspection period i.e., 15.02.2020. A copy of the form MGT-7 of BTPL for the Financial Year ending 2019 and 2020 are annexed herewith as* ***Annexure 2 (Colly)****.*

II. PRELIMINARY SUBMISSIONS:

5. The Noticees established BTPL with a view to promote financial literacy and encourage common people to invest in stock markets and generate wealth. One of the main purposes of establishing BTPL was to eliminate bad selling and help its subscribers make well informed investing decisions. Accordingly, the Bharosa Club Website provided learning materials as well as tools to help introduce stock market investing to lay persons. All of this information was uniformly available to all subscribers on the Bharosa Club Website, which is a public platform.

*6. During the inspection period, while BTPL is registered as an investment adviser, it did not undertake the business of providing investment advice. During the inspection period, BTPL operated an online publishing business on the Bharosa Club Website and the Smallcase publishing platform. To be clear, BTPL did not at any point of time provide any investment advice to any of its subscribers on Bharosa Club Website and Smallcase publishing platform. In fact, BTPL had vide its letter dated 28.12.2019 expressly mentioned that BTPL does not provide any investment advice and requested a temporary suspension of its registration with SEBI. BTPL had further sought a clarification from SEBI with regard to BTPL not providing investment advice, so that prior permissions, if any, can be taken in the event the BTPL is not covered by exemption under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("**IA Regulations**"). However, no such clarification or response was provided by SEBI. A copy of the letter dated 28.12.2019 and termination letter dated 18.08.2022 is annexed as **Annexure 3 (Colly).***

*7. It is BTPL's submission that publication of an online model portfolio which is widely available to the public (in this case the Bharosa Club Website and Smallcase publishing platform), does not constitute investment advice. The Bharosa Club Website is in the nature of a magazine. Similarly, the microsite operated by BTPL on the Smallcase publishing platform was in the nature of publicly accessible electronic platform, where BTPL was publishing model portfolios. The IA Regulations clearly provide that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice. This exemption squarely applies to all publication activities undertaken by BTPL on the Bharosa Club Website and Smallcase publishing platform. A copy of the screenshots of Bharosa Club website is annexed herewith as **Annexure 4 (Colly)**. [**refer to point 2 of the preliminary objections of the Reply**]*

*8. No execution or facilitation of any investments/transactions were provided by BTPL either on the Bharosa Club website or the Smallcase publishing platform or in any other manner. The Bharosa Club Website merely had a 'transact' option on its website, which would redirect the users to the MFU platform, which would carry out the execution services. MFU platform is a transaction aggregation portal that provides execution services to the users seeking to invest in the securities market. [**refer to Response to 7.8 at page 24 of the Reply**]*

9. It is submitted that the 360 Degree Financial Plan was only launched as a test case to provide investment advisory services with one test customer. However, it was decided not to go ahead with the 360 Degree Financial Plan. The Noticees did not give any investment advice under the 360 Degree Financial Plan. In any event, the 360 Degree Financial Plan was discontinued by BTPL.

III. SUPPLEMENTARY RESPONSE TO ALLEGATIONS:

10. With respect to allegation 7.1:

*a. It is reiterated that the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27.12.2019 is not applicable to BTPL, as it is well established that no investment advice was given by the Noticees during the inspection period on the Bharosa Club Website or the Smallcase publishing platform. [**refer to Response to 7.1 at page 7 of the Reply**]*

*b. It is submitted that the payments received by BTPL via Razorpay payment gateway was towards the subscription fees for the Bharosa Club Website. Though the said circular was not applicable to the activities undertaken by BTPL on the Bharosa Club Website and Smallcase publishing platform, this practice was discontinued by Smallcase from 01.01.2020 as intimated via its email dated 31.12.2019. BTPL had promptly informed its Smallcase subscribers vide its email dated 02.01.2020 about the said circular. The compliance with the aforesaid circular was also duly communicated to SEBI by the Noticee 3 vide his email dated 20.02.2020. A copy of the email dated 31.12.2019 and 02.01.2020 is annexed herewith as **Annexure 5 (Colly).***

*c. The said fact of not accepting payments via payment gateway was also communicated to the customer of the 360 Degree Financial Plan vide email dated 12.01.2020. A copy of the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27.12.2019 is annexed herewith as **Annexure 6.** A copy of the email dated 12.01.2020 is annexed herewith as **Annexure 7.***

11. With respect to allegation 7.2:

*a. The Noticees, vide their Reply, had respectfully brought on record multiple communications sent to SEBI apprising them of the material changes, demonstrating substantial compliance with the reporting obligations under the IA Regulations. It is submitted that BTPL had duly informed SEBI about the fact that the Noticee 3 is the CEO with effect from 15.02.2020 vide their email dated 20.02.2020. A copy of the communication dated 20.02.2020 has been annexed herewith as **Annexure 8.***

b. Further, there was no change in the compliance officer during the inspection period and the Noticee 4 remains the compliance officer, till date. However, the Noticee 3 after becoming CEO of BTPL, also became the investment advisor for BTPL.

c. Evidently, there has been substantial compliance of the IA Regulations by the Noticees, and the Noticees have always acted in good faith. Any delay or oversight on reporting any material change was on account of administrative oversight. In any event, the Noticees are now in full compliance with the SEBI regulations and have promptly and duly apprised SEBI of material developments.

Change in control and material change in shareholding pattern

d. It is reiterated that there has been no change in control in BTPL as the majority shareholders, both at the beginning as well as at the end of the inspection period, were Noticee 2, Noticee 3 and Noticee 4, who are members of the same immediate family. Pertinently, Noticee 2 (Mr. Sanjay Bhargava) and Noticee 4 (Ms. Anita Bhargava) are husband and wife, and the parents of Noticee 3 (Mr. Sahil Bhargava). The Noticee 2, Noticee 3 and Noticee 4 have had joint control of BTPL throughout *the inspection period. It is further submitted that any transfer of shares between immediate family members shall be construed as an intra-family transfer of shares. In this regard, we draw your attention to SEBI Circular SEBI/HO/MIRSD/DOR/CIR/P/2021/42 dated 25.03.2021. A copy of the SEBI Circular SEBI/HO/MIRSD/DOR/CIR/P/2021/42 dated 25.03.2021 has been attached herewith as **Annexure 9**.*

12. *With respect to allegations 7.3 and 7.4:*
    a. *BTPL did not provide any investment advice on Bharosa Club Website and Smallcase publishing platform. Accordingly, there was no statutory obligation on BTPL to conduct risk profiling and suitability assessment with respect to users that accessed the material published by BTPL on the Bharosa Club Website and the Smallcase publishing platform, as such published material do no constitute investment advice. That said, Smallcase conducted risk profiling and suitability assessment for its own users on the Smallcase website.*

    b. *With respect to 360-Degree Financial Plan, where a single test customer was sought to be serviced, the engagement was terminated at a preliminary stage, prior to provision or any investment advisory services. Notwithstanding the aforesaid, it is a matter of fact that a risk profile questionnaire was shared with Mr. G. Rxxxxxxn in the 360-degree financial plan vide the email dated 15.01.2020. A copy of the email dated 15.01.2020 is attached herewith as **Annexure 10.***

13. *With respect to allegation 7.5:*

    a. *BTPL did not provide any investment advice on Bharosa Club Website, Smallcase and 360 Degree Financial Plan and is thus, not an investment advisor qua the said users. Therefore, there was no requirement for BTPL to provide any disclosures.*

    b. *Notwithstanding the aforesaid, BTPL provided relevant disclosures in its terms of service on the Bharosa Club Website. A copy of the terms of service is attached herewith as **Annexure 11.***

    c. *With respect to 360-Degree Financial Plan, where a single test customer was sought to be serviced, the engagement was terminated at a preliminary stage, prior to providing any investment advisory services. The user decided to not go ahead with the Plan as expressed vide his email dated 19.03.2020. A copy of the email dated 19.03.2020 is attached herewith as **Annexure 12.***

14. *With respect to allegation 7.6:*
    a. *BTPL did not provide any investment advice on Bharosa Club Website, Smallcase and 360 Degree Financial Plan and is thus, not an investment advisor qua the said users. Therefore, in view of the aforesaid, coupled with the fact that no execution or facilitation of any investments/transactions were being carried out on the Bharosa Club website or the Smallcase platform, there was no requirement for BTPL to maintain any record in the absence of any users. [**refer to Response to 7.6 and 7.8 of the Reply**]*

    b. *Notwithstanding the aforesaid, the Noticees are in compliance of the requirements and norms pertaining to maintenance of records. The record of clients subscribing to Smallcase as well as Bharosa Club has already been placed on record as an annexure to the reply to the Pre-Inspection Questionnaire which contains the relevant client information. For the sake of convenience of the Ld. Adjudicating Officer, the record of clients has been attached herewith as **Annexure 13**.*

IV. <u>ADDITIONAL OBJECTION ON ACCOUNT OF INORDINATE DELAY</u>

15. *It is respectfully submitted that the period of inspection of the Noticees was from 01.04.2019 to 31.03.2020 and the SCN was only issued on 11.08.2023, after a lapse of more than three years. Hence, there was an inordinate delay in the initiation of the proceedings by issuance of the SCN without any just reasoning for the same.*

16. *It is alleged in the SCN that the Noticees have purportedly committed the irregularities in the year 2019- 2020. It is no longer res integra that a show cause notice issued after a substantial delay cannot be sustained in law.*

17. *In this regard, it is humbly submitted that the allegations raised in the SCN pertain to the FY 2019-20, for which majority of the records are no longer available with the Noticees. In the absence of such records, it would be extremely difficult for the Noticees to put up their defence to the SCN. Clearly, since the delay of over 3 years in issuing the SCN is not attributable to the Noticees, it would be against the principles of natural justice if any enquiry is conducted against the Noticees in terms of the belated SCN.*

18. *The Noticees submit that for the reasons stated hereinabove, it is clear that none of the assertions as made in the SCN are sustainable in the eyes of law and therefore, any enquiry or further adjudication in this regard against the Noticees will be contrary to the settled principles of law. It is a matter of fact and record that the Noticees have extended full cooperation to SEBI. Any issues identified in the inspection report have been duly addressed and the Noticee 1 is in compliance with the IA regulations and other relevant SEBI regulations. In fact, there have been no customer complaint against the Noticees with respect to any of its services during the inspection period. Further, BTPL had terminated its business partnership agreement with Smallcase on 18.08.2022 and has not published any information on the Smallcase publishing platform since terminating the same.*

19. *The Noticees vision is to help people make informed investment decision and promote investment in capital markets. Therefore, any enquiry/ investigation/ adjudication against the Noticees in pursuance of the SCN will cause grave prejudice to the Noticee 1 and will not be in the interest of justice as there are no non compliances to be rectified in any event. Without prejudice, it is submitted that the nature of the allegations in the SCN are largely technical in nature and have already been rectified. In view of the aforesaid, it is humbly prayed that since the Noticees are in full compliance with SEBI Regulations, there should be no further inquiry or investigation against the Noticees and the captioned matter should be closed.*

…."

D. CONSIDERATION OF ISSUES AND FINDINGS:

11. The issues that arise for consideration in the present matter are following:

Issue No. I: Whether the Noticees have violated the provisions of SEBI Act, 1992, SEBI (IA) Regulations, 2013 and SEBI Circulars, as alleged?

Issue No. II: Do the violations of provisions mentioned above, if any, attract monetary penalty under section 15EB and 15HB of the Securities and Exchange Board of India Act, 1992?

Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

Issue No. I: Whether the Noticees have violated the provisions of SEBI Act, 1992, SEBI (IA) Regulations, 2013 and SEBI Circulars, as alleged?

12. I note that the allegations in the instant matter pertain to the alleged violation by Noticee wherein other Noticees were the director or CEO of Noticee at the relevant period and were involved in the day to day activities of Noticee being a part of senior management. Considering the aforesaid and that common reply was filed by all the Noticees, this order deals with the violations in respect of Noticee firstly and accordingly the role and the liability if any wrt N2, N3 and N4 would be ascertained consequently.

13. Before going into the merits of the case, I note that the Noticees had raised preliminary contention in their submissions which are dealt hereunder:

13.1. I note that Noticees have raised a preliminary objection inter alia contending that , *' … the SCN proceeds on a false and frivolous premise that BTPL has provided investment advice without complying with the IA Regulations., …. during the Inspection Period, BTPL was operating a website* www.bharosaclub.com*, wherein BTPL provided general information on mutual fund investments, analytical/ comparison tools and news articles to its subscribers… it is abundantly clear that the aforesaid activities do not constitute investment advice. Hence, in absence of any investment advice rendered by BTPL, it is submitted that the assertions made in the SCN are misplaced and contrary to unambiguous terms as provided in the IA Regulations. … It is pertinent to highlight that while BTPL is also registered as an Investment Adviser, it has not per se provided any investment advice to any person and in fact did not have any clients for investment advisory services during the Inspection Period. It is further submitted that since BTPL has no advisory clients, the question of providing execution/ facilitation services to any such clients does not arise. …'.* To summarize and put it pithily in simple terms, the Noticee has contended that it was not into business of investment advisory.

13.2. In this regard, firstly I note that it is a matter of record that Noticee had sought and is a SEBI Registered Investment Advisor since May 06, 2016. Further in this regard, it would be relevant to draw reference to the relevant provisions of the SEBI (Investment Advisors) Regulations, 2013, which are reproduced as under:

Regulation 2(1)(m) of SEBI (Investment Advisors) Regulations, 2013,

(m) "investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;

Regulation 2(1)(l) of SEBI (Investment Advisors) Regulations, 2013,

(l) "investment advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:
Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;

Regulation 2(1)(h) of SEBI (Investment Advisors) Regulations, 2013

(h) "financial planning" shall include analysis of clients' current financial situation, identification of their financial goals, and developing and recommending financial strategies to realise such goals;

13.3. In this regard as regards consideration aspect, I note from the material available on record that, Noticees had inter alia submitted to SEBI that, ' *… We operate an unusual business model for an IA, … with very minimal fees. …*'; '…*Our core product is the Bharosa Club Membership, which is priced at Rs. 1000 + GST for a one year membership. …*'; '…*Our sole source of fees are directly from the customer …'*. Accordingly, I note that, that Noticee was accepting /charging fee from its clients viz., Bharosa Club Members, is undisputed and matter of record.

13.4. Having dealt with the above it would now be relevant to deal with the aspect relating to the services available and /or offered by the Noticee to its client's viz., Bharosa Club Members (interchangeably referred to as Clients / Members, unless the context otherwise relates). In this regard, firstly I note that the clients were required to register with the Noticee and the content and /or services were available to the clients through secure login. Further in this regard, I note from material available on record that Noticees as part of their reply to SEBI had inter alia submitted that, ' *… Company was established in 2015 and became an IA in 2016 with objective of replacing bad selling with good selling …*'. I also note from material available on record that it had been observed by SEBI that Noticee as part of services to its clients was providing comparative data so that its clients make investment decision and that it provided model portfolios with risk categorization in which the clients can invest by doing their own risk profiling and that Noticee also took consideration for such services. Accordingly, it was inter alia noted that the clients of the Noticee taking its Bharosa Club services were getting investment advice to invest /deal in securities. I also note from the website of the Noticee that on its website the Noticee prominently displays /claims, ***'Bharosa 24x7** monitors your portfolio and helps You make better decisions.'; 'It's never been this easy to move to a healthy portfolio. Peace of mind right at your fingertips on WhatsApp.'; 'We dig* *deep to deliver profound truths, improvement opportunities and health reports for your portfolio'; 'We find the problems so you can rest easy. Our technology constantly analyses your portfolio to uncover deep, hidden problems and insights and informs you at a pace you can deal with'; 'our technology empowers you to easily make calls on your own or with your advisor using our decision models.'; 'See the improvement right in front of your eyes. The Bharosa score tells you how healthy your portfolio is. Watch your score improve as you make better decisions over time'; 'The Bharosa Effect Bharosa Club members have improved returns, lowered fees and attained peace of mind'* (https://www.bharosaclub.com/#how-it-works / https://www.bharosaclub.com/#bharosa-effect).

13.5. I note that Noticees as part of their submissions has inter alia contended that Noticee was providing general – not specific advice and accordingly same does not get covered under SEBI IA Regulations. In this regard in my opinion assuming for time being that the services provided by the Noticee were otherwise freely available to everybody at large, as contended by the Noticee, such a contention in itself sans logic as who then would have even opted to pay if every service was otherwise freely available. It is a matter of record that clients had access to the content and services by way of secure login.

13.6. Further in this regard, I also note from the submissions of the Noticees that at several places while on one hand it has inter alia been contended that the requirement and /or provision of law alleged to have been violated was not applicable to the activities undertaken by BTPL, on the other hand compliance of the same has also inter alia been indicated. Assuming that it were a case that the stated requirement was not applicable, why would some have deviated from the existing practice. To cite one such example, I note that as regards alleged violations relating to having received payments via Razorpay it had inter alia been submitted, *" … the payments received by BTPL via Razorpay payment gateway was towards the subscription fees for the Bharosa Club Website. Though the said circular was not applicable to the activities undertaken by BTPL on the* Bharosa *Club Website and Smallcase publishing* *platform, this practice was discontinued by Smallcase from 01.01.2020 … . BTPL had promptly informed its Smallcase subscribers vide its email dated 02.01.2020 about the said circular. … "*. Rationally speaking why would someone comply with a requirement if the same was not applicable. In the instant case Noticee has itself not only indicated to have discontinued receiving payments through payment gateway drawing reference to the related SEBI Circular but also indicated to have informed its susbscribers about the related SEBI Circular. Accordingly I note that the submissions of the Noticees are conflicting and contradictory in nature.

13.7. In view thereof considering that the access to the content and services by Noticee were available by way of secure login to those who had subscribed to the Bharosa Club Membership which was against payment of fee and the nature of services being provided by the Noticee, the contention of the Noticee that, it was providing general – not specific advice and accordingly same does not get covered under SEBI IA Regulations, is devoid of merit and hence not acceptable.

14. I now proceed to deal with the matter on merits as regards the alleged violations in respect of the Noticee.

14.1. **Using payment gateway mechanism to receive fees:**

14.1.1. It was inter alia alleged that Noticee had violated Clause 1. (iii) of SEBI Circular- SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.
Further it was inter alia alleged that Noticees' have violated Clause 1.(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.1.2. In this regard, it was inter alia alleged and observed from the SCN that the IA had accepted fees for providing investment advice through payment gateway mechanism and accordingly, the entity had violated the provisions of relevant SEBI circular barring IAs from receiving fees through payment gateways.

14.1.3. I note that Noticees have neither disputed nor denied the allegation regarding using of payment gateway mechanism to receive fees from its clients instead Noticees' submission as reply to the SCN, are in nature of admission in so far as Noticees had inter alia submitted that "…*as on date, BTPL does not accept any payment via a payment gateway*."

14.1.4. In this regard, I note from HDFC bank statement having Account No. 5020001600xxxx belonging to M/S, BHAROSA TECHNOSERVE PRIVATE LIMITED 401 ARADHANA APARTMENTS R K PURAM SECTOR 13 that Noticee was receiving fees using Razorpay Software. I note that the said bank statement was provided to Noticee as part of SCN and the same has not been disputed by Noticee in their reply to the SCN.

14.1.5. With regard to the contention of Noticees that *"services provided by the Noticees during the Inspection Period do not fall within the purview of the definition of 'Investment Advise' as defined in the IA Regulations as demonstrated below. Therefore, the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated 27.12.2019, violation of which has been alleged in the SCN by SEBI, is not applicable to the Noticees and thus, the Noticees are not in violation of the same,"* I note from the material available on record that Noticee was a registered intermediary and was providing Investment advice by charging subscription fee during the relevant period as discussed in detail in the foregoing and the same has not been repeated as a matter of brevity.

14.1.6. With regard to the contention of Noticees that "*the payments received by BTPL via Razorpay pertains to subscription fees for the Bharosa Club*

Website, which is not in the nature of consideration for investment advice." In this regard, I note from Regulation 2(g) of SEBI (IA) Regulations, 2013 defines consideration as "consideration means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice". The said definition nowhere states that a subscription fee cannot be not considered as consideration.

14.1.7. In this regard, the relevant provision alleged to have been violated read as under:

SEBI Circular- SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019

"….
(iii) Receiving fees through banking channel only

…..IAs shall accept fees strictly by account payee crossed cheques / demand draft or by way of direct credit into their bank account through NEFT/ RTGS/IMPS/UPI."

14.1.8. From the above text, I note that the Noticee, being listed entity as Investment Adviser had to ensure that it shall accept fees strictly by account payee crossed cheques / demand draft or by way of direct credit into their bank account through NEFT/ RTGS/IMPS/UPI.

In view thereof I hold that by receiving the fee through gateway mechanism viz. Rozerpay, Noticee had violated Clause 1. (iii) of SEBI Circular- SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2,3 and 4

14.1.9. I note that the allegations in the instant matter pertained to the alleged violation by Noticee wherein Noticees' being directors and representative /CEO /Compliance Officer of the Noticee during relevant period were involved and responsible for the day to day affairs, being a part of senior management. In this regard, as the violations are already established in respect of Noticee, I now proceed to deal with the alleged violation in respect of remaining Noticees.

14.1.10. In this regard, I note from Clauses 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 that *"The senior* management *of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate."*

14.1.11. I note from material available on record that Noticee 2 was Director of IA, Noticee 3 was Director and CEO of IA and Noticee 4 was Director and Compliance Officer of IA. Noticee 2, 3 and 4 were representative among the senior management of the IA during the relevant period. Accordingly, as per Clauses 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013, Noticee 2, 3 and 4 shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate (IA in the instant matter).

14.1.12. I note from material on record that Noticee had submitted extracts of the minutes of the meeting of the board of directors held on January 16, 2020 wherein it has inter alia been recorded that, ' … there should not be any whole time appointment of employee in the Company till milestones are achieved by the CEO till 31/03/2020 … '. Further, I also note from material on record that under S. No. 6 of its response letter dated November 25, 2020 to the Inspection Questionnaire, Noticee 1 had inter alia stated that Noticee 3 and Noticee 4 were the two directors and under S. No. 9 of its said response letter to SEBI, Noticee had inter alia indicated that, " … We have no on-roll employees. The two active people draw no salary from the company … ". It is accordingly evident that Noticees' being part of the senior management were running and responsible for day to day affair of the Noticee.

14.1.13. Further I also note from material available on record that the control of the IA existed with Sanjay Bhargava (Noticee 2) till 14.02.2020 and the Control of IA exists with Mr. Sahil Bhargava (Noticee 3) w.e.f 15.02.2020. In this regard, it is matter of record that Mr. Sanjay Bhargava is the father of Mr. Sahil Bhargava. Further, I note that Ms. Anita Bhargava (Noticee 4) was the Director and Compliance Officer of IA and the wife of Ms. Sanjay Bhargava and mother to Mr. Sahil Bhargava.

14.1.14. In this regard, reliance is placed on Section 27 of SEBI Act, 1992 which states the following:

> *"…*
> ***[163][Contravention by companies.]***
> *27. (1) Where [164][a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder] has been committed by a company, every person who at the time the [165][contravention] was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the [166][contravention] and shall be liable to be proceeded against and punished accordingly…"*

14.1.15. In this regard, reliance is also placed on the Hon'ble Supreme Court Judgement in *N* Narayanan *vs* Adjudicating *Officer, SEBI dated 26 April, 2013,* (AIR 2013 SUPREME COURT 3191) wherein Hon'ble Supreme Court inter alia held that:

> *"..Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

14.1.16. Further, reliance is also placed on the WTM Order of SEBI in the matter of *Neesa Technologies Limited* dated November 29, 2018, wherein SEBI WTM inter alia held that:

> *"…Section 27 of SEBI Act also deals with situations where Directors of the company are liable for the offences by the company. The obligations under SEBI Act are in addition to and not in derogation of the obligations under the Companies Act, 1956. As observed by Hon'bleSupreme Court of India in the Sahara Case," I only want to highlight the fact that both the Acts will have to work in tandem, in the interest of investors, especially when public money is raised by the issue of securities from the people at large." It is noted that one of the situations in which the liability of Directors spring up under Section 27 of the SEBI Act is when the offence committed is attributable to the neglect of the Director or knowledge of the Director of the violation. Therefore, even under Section 27 of the SEBI Act, Noticee as a Director would have liability if acts of neglect can be found against him…"*

14.1.17. In this regard, I note that Company (IA in the instant matter) being a legal entity cannot act by itself, it can act only through its Directors. It is an established principle of legal jurisprudence that the Directors are the repository of wisdom and brains behind all acts of a company, which is merely an artificial person.

14.1.18. In view thereof, it is noted that Noticee 2,3 and 4 being representative among the senior management of the IA were in control of the IA. They were in charge of the IA and were responsible for day to day affairs of IA and the conduct of business of the company (IA) hence are liable for the violations committed by the Noticee. Therefore, for the violations established on part of the Noticee, the same shall ipso facto be ascribed to the Noticees', being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing. In this regard, I also note that neither of the Noticees' have denied and /or disputed or pleaded ignorance of the alleged violations nor have taken any other defense to plead discharge from the liability emanating from the said acts and omissions on part of the Noticee.

In view thereof, I hold that Noticees' had violated Clause 1.(iii) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and

Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.2. **Not informing SEBI about material changes and Not taking prior approval for change in control-**

14.2.1. It was inter alia alleged the Noticee by not informing SEBI about material changes in shareholding pattern, the entity had violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and the entity had violated Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

Further, it was inter alia alleged that Noticees' had violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992 and Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.2.2. In this regard I note from the material available on record that SEBI had inter alia observed that the Noticee as part of the pre inspection questionnaire had submitted that there was no material change in information and particulars previously submitted to SEBI and that there was no change in control of the entity. However, from the shareholding pattern as on 31.03.2020, as submitted by the Noticee to SEBI in response to the pre inspection questionnaire (PIQ), it was noted by SEBI that Mr. Sahil Bhargava had fifty-one percent shares of the Noticee and hence was the majority shareholder. In this regard, on perusal of the already available information in respect shareholding pattern vis-à-vis the information submitted by the Noticee in response to the PIQ and during the inspection, it was noted by SEBI that there were changes in the said information and that the Noticee had not informed SEBI about material changes in the shareholding pattern. Further, the entity also failed to take prior approval for change in control from Shri Sanjay Bhargava to Shri Sahil Bhargava. The entity also non-cooperated with the inspection team by submitting false information in respect of change in control and material changes in information already submitted to SEBI as pointed out above.

14.2.3. The relevant text of inter alia provisions alleged to have been violated are reproduced below:

"….

Conditions of certificate.

13. *The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

(a) the investment adviser shall abide by the provisions of the Act and these regulations;
(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;

…."

General responsibility.
15.(1)
"….
(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.
…."

14.2.4. In this regard, I note that Noticees as part of their submission as reply dated September 05, 2023 to the SCN had inter alia contented that, *' … there has not been any change of control in BTPL. BTPL was jointly controlled by Noticee 2, 3 and 4 and it remains to be jointly controlled by Noticee 2, 3 and 4. Clearly, BTPL was under control of Mr. Sanjay Bhargava and his immediate family. The information pertaining to the* *change in shareholding is clearly reflected in the records of SEBI. Pertinently, the transfer of shareholding was in the nature of intra family arrangement and thus, there is no change of control in BTPL. A perusal of the shareholding pattern as on 31.03.2019 and 31.03.2020 will show that that Noticee 2, 3 and 4 collectively held 80.43% shareholding as on 31.03.2019 and 85.09% as on 31.03.2020. … . In this regard, reliance is placed on Regulation 1 (a) of the SEBI/HO/MIRSD/DOR/CIR/P/2021/42 dated 25.03.2021 which states that "Transfer of shareholding among immediate relatives shall not result into change in control. Immediate relative shall be construed as defined under Regulation 2(l) of SEBI SAST Regulations which inter-alia includes any spouse of that person, or any parent, brother, sister or child of the person or of the spouse." … The said regulations are binding on all intermediaries. …. . Therefore, there has been no change in control at BTPL and hence, there was no requirement for BTPL to inform or take prior consent of the SEBI. ….".*

14.2.5. In this regard, I note that similar submission had been made by the Noticees as part of additional submissions vide reply dated September 28, 2023 to the SCN in so far as Noticees have inter alia contented that, *' … It is reiterated that there has been no change in control in BTPL as the majority shareholders, both at the beginning as well as at the end of the inspection period, were Noticee 2, Noticee 3 and Noticee 4, who are members of the same immediate family. Pertinently, Noticee 2 (Mr. Sanjay Bhargava) and Noticee 4 (Ms. Anita Bhargava) are husband and wife, and the parents of Noticee 3 (Mr. Sahil Bhargava). The Noticee 2, Noticee 3 and Noticee 4 have had joint control of BTPL throughout the inspection period. It is further submitted that any transfer of shares between immediate family members shall be construed as an intra-family transfer of shares. In this regard, we draw your attention to SEBI Circular SEBI/HO/MIRSD/DOR/CIR/P/2021/42 dated 25.03.2021. …'.*

14.2.6. In this regard, I note from the submissions of the Noticees that there was change in shareholding of the Noticee in so far as inter alia the shareholding of Mr. Sahil Bhargava had changed from 1.93% as on March 31, 2019 to 51% as on March 31, 2020 and the shareholding of Mr. Sanjay Bhargava had changed from 64.78% as on March 31, 2019 to 22.46% as on March 31, 2020. Thus I note that there was change in the shareholding of the shareholders holding more than five percent shareholding is a matter of record. Having regard thereto, it would be pertinent to refer to provisions of Regulation 2(1)(e) of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, which inter alia reads as under:

> *" …*
> *(e) "change in control" in relation to a company or a body corporate, means:*
> *(i) if its shares are listed on any recognized stock exchange, change in control within the meaning of clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;*
> *(ii) in any other case, change in the controlling interest or change in legal form.*
> *Explanation.— For the purpose of sub-clause (ii), the expression "controlling interest" means an interest, whether direct or indirect, to the extent of more than fifty percent of voting rights or interest;*
> *…*
> *."*

14.2.7. I note from material available on record that as regards change in control Noticee as part of its response dated November 25, 2020 to the PIQ had stated there was no change in control.

14.2.8. Further in this regard I note that from the submissions of the Noticee that while as on March 31, 2019, Sanjay Bhargava held more than fifty percent shareholding of the Noticee, however as on March 31, 2020, Sahil

Bhargava held more than fifty percent shareholding. In this regard, I note that Noticee has not demonstrated with relevant details and documents that there was no change in controlling interest with regard to shareholding of the Noticee and that there was no change in control having regard to the provisions of Regulation 2(1)(e) of SEBI IA Regulations. Further in this regard, from copy of document titled, 'Annual Report-Bharosa-2020.pdf', submitted by the Noticee 3 to SEBI vide email dated November 25, 2020, I note that in the Annual Report of the Noticee for FY ended March 31, 2020, on Page 39 it had been stated that Mr Sanjay Bhargava ceased to be Director wef 15.02.2020. Further, as regards control, I note that following was also inter alia stated on Page 39 of the Annual Report of the Noticee for FY ended March 31, 2020:

> "
>
> …
>
> Mr. Sanjay Bhargava (Control existed upto 14.02.2020)
>
> Mr. Sahil Bhargava (Control exists w.e.f. 15.02.2020)
>
> …
>
> ".

14.2.9. Accordingly, from the documents as submitted by the Noticees itself there was change in control from Sanjay Bhargava to Sahil Bhargava with Sanjay Bhargava concurrently also ceasing to be Director of Noticee wef 15.02.2020.

14.2.10. In this regard, I note that Noticees as part of their submissions placing reliance on SEBI Circular No. *SEBI/HO/MIRSD/DOR/CIR/P/2021/42 dated 25.03.2021* inter alia contended that there was no change in control. In this regard I note that the cited circular dated March 25, 2021 of SEBI, submitted by Noticees as part of their submissions, was addressed to: All Stock Brokers through exchanges, All Depository Participants through Depositories, All Merchant Bankers, All Registrar to an Issue and Share Transfer Agent, All Debenture Trustee, All Credit Rating Agencies, All Bankers to an issue. Accordingly, the contention of the Noticee in this regard, in my view is apparently misplaced and devoid of merit and hence not acceptable.

14.2.11. With regard to other observation of SEBI that Noticee did not cooperate with the inspection team by submitting false information in respect of change in control and material changes in information already submitted to SEBI, I note that Noticees in their reply to the SCN has submitted that "*the aforesaid intra family transfer of shares of BTPL was duly informed to SEBI by the Noticee 3 vide his email dated 25.11.2020".* In this regard I note from material available on record that the cited email dated November 25, 2020 of Noticee 3 to SEBI was in response to SEBI Emails dated November 05 and 24, 2020 with regard to inspection notice and requirement to submit the reply to questionnaire in the prescribed form i.e., Pre Inspection Questionnaire which inter alia involved several aspects from the perspective of inspection by SEBI and neither in ordinary course nor restricted /specific to the material changes only. Generally speaking assuming there was a material change in information already submitted which otherwise a regulated entity was under obligation to report to the regulator, the same ought to be submitted forthwith and not as part of pre inspection questionnaire.

14.2.12. Further in this regard, as regards contention of the Noticee that, ' … *intra family transfer of* shares *of BTPL was duly informed to SEBI by the Noticee 3 vide his email dated 25.11.2020 …', while the Noticees have* taken defense of having informed about the same vide email dated November 25, 2020, I note that as per the information submitted by the Noticee itself, the change in shareholding occurred on February 15, 2020 i.e., almost nine months prior. Evidently the said contention of the Noticees in this regard is as an afterthought and lacks merit as had there been no inspection of the Noticee by SEBI, there would not have been any such email dated November 25, 2020.

Accordingly, the submissions of the Noticees in this regard are devoid of merit and hence not acceptable.

In view thereof, the alleged violation as regards to Noticee that Noticee did not informed SEBI about material changes in shareholding pattern, stands established. Therefore, I hold that the Noticee had violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2,3 and 4

Noticees' being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing and not being repeated here for sake of brevity are liable for the violations committed by the Noticee and therefore, I hold that Noticees' had violated Regulations 13 (a), 13 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992 and Regulations, 13 (a), 15 (11), 25 (1), 25 (2) and Clauses 1, 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.3. **Not performing the risk profiling in the requisite manner and outsourcing the same-**

14.3.1. In this regard, it was inter alia alleged that the Noticee had violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.

Further, it was inter alia alleged that the Noticees' had violated

Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

14.3.2. In this regard, it was inter alia observed and alleged that the Noticee in response to Point No. 18 of the Pre Inspection Questionnaire had submitted that for clients taking general advice (Client of their Bharosa Club Membership), risk profiling and suitability assessment was unnecessary. There were 138 such clients out of total 187 clients.

14.3.3. However, in this regard it was observed that the regulation do not differentiate between general and specific advice. Further, as submitted by Noticee, the Noticee provided comparative data so that their clients make an investment decision and they provide model portfolios with risk categorization in which the clients can invest by doing their own risk profiling. The Noticee also took consideration for this service. It was observed by SEBI that the clients of the Noticee taking its Bharosa Club services were indeed getting investment advice to invest /deal in securities from the Noticee and hence, risk profiling and suitability assessment should have been done in the requisite manner. For 48 clients who had subscribed for entity's services through Smallcase, Noticee on the day of inspection had submitted that risk profiling of such customers' were performed by Smallcase. After risk profiling was done the customer had access to the advice of the Noticee without their intervention or review. For one client who had taken advisory under 360 degree financial plan of the Noticee, the Noticee had provided a copy of risk profiler sent to him vide email, however, the responses of the client and suitability assessment was not provided. Also, the risk profiler was not as per requirements under Regulation 16 of SEBI IA Regulations, 2013. Hence, it was observed by SEBI that the Noticee had not performed the risk profiling in the requisite manner in respect of all its clients and outsourced a core function of risk profiling of 48 clients to Smallcase.

14.3.4. The relevant text of provisions alleged to have been violated is reproduced below:

Conditions of certificate.

13. *The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

(b) the investment adviser shall abide by the provisions of the Act and these regulations;

Risk profiling.

16. *Investment adviser shall ensure that,-*
(a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-
(i) age;
(ii) investment objectives including time for which they wish to stay invested, the purposes of the investment ;
(iii) income details;
(iv) existing investments/ assets;
(v) risk appetite/ tolerance;
(vi) liability/borrowing details.
(b) it has a process for assessing the risk a client is willing and able to take, including:
(i) assessing a client's capacity for absorbing loss;
(ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;
(iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.
(c) where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;
(d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:
(i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand;
(ii) questionnaire is not structured in a way that it contains leading questions.
(e) risk profile of the client is communicated to the client after risk assessment is done;
(f) information provided by clients and their risk assessment is updated periodically.

…"

14.3.5. In this regard, I note that Noticee was required to perform Risk profiling as per the criteria provided in Regulation 16 of SEBI (IA) Regulations, 2013. In this regard, I note that submissions of the Noticee in this regard as part of its replies to the SCN are in nature of admission in so far as Noticees have submitted that, " … *since the information given by the Noticees on the Platform during the Inspection Period, does not fall within the purview of 'Investment Advice', the said regulation is not applicable to* BTPL *and* *there was no requirement for BTPL to mandatorily carry out the risk profiling.”*

14.3.6. Noticees in their reply to the SCN has also submitted that “…*with respect to the one client who had taken the trial advisory services under the 360 degree Financial Plan, a copy of the risk profile questionnaire was provided to the said customer in terms of Regulation 16 of the IA Regulations.”.* In this regard, from perusal of copy of email dated January 15, 2020, provided by the Noticees as Annexure 10 (said document) in support of their submissions in this regard, pertaining to Risk Profile Questionnaire, I note that same was limited to questions / information pertaining to time horizon for withdrawal of money, return as possible outcome for investment, % of total wealth planning to invest, investments currently held and date of birth only as such and did not cover all aspects as envisaged in accordance with provisions of Regulation 16 of SEBI IA Regulations, 2013. I also note from perusal of said document that while same contains ‘From’ email id viz., sanjay@bharosaclub.com , however the same does not indicate ‘To’ viz., recipient’s email id. Further in this regard, even assuming that such a document pertaining to Risk Profile Questionnaire was sent by Noticee to the client, I note that the said document is only limited to questionnaire by Noticee and no documents relating to response of the client and subsequent risk profiling have been submitted. Accordingly, the submissions of the Noticee in this regard are devoid of merit and hence not acceptable.

14.3.7. As regards the alleged violation relating to outsourcing of core function of risk profiling to Smallcase, I note that Noticees as part of their reply to the SCN have submitted that *“ … the role of Noticee is only limited to publishing information on the* Smallcase *Platform…..it is specifically denied that BTPL has outsourced risk profiling with respect to investment advisory to Smallcase. …”.*

14.3.8. In this regard, I note from material available on record that Noticees’ earlier response to SEBI with respect to the findings of the inspection were in nature of admission in so far as Noticee had inter alia replied to SEBI that, *'… Regarding smallcase customers, SEBI is correct that this function is being* outsourced *currently. We do not believe the SEBI regulations are clear that risk profiling cannot be outsourced. Smallcase is handling all operational procedures and we have access to all these. While this maybe the intent of SEBI, in our view the market is not operating this way, …..'*. Therefore, I note that Noticees' submissions during the instant proceedings as reply to the SCN in this regard are contradictory in nature and are evidently made with afterthought. In any case, even if for time being it were to be ignored that Noticees submissions now were contradictory to its response to SEBI earlier, I note that while Noticees submissions now are mere statements in so far as while Noticees have inter alia contended that, ' … *it is specifically denied that BTPL has outsourced risk profiling with respect to investment advisory to Smallcase … ',* Noticees have not demonstrated with relevant details and documents as to risk profiling was being done by it. I therefore note that the submissions of the Noticees in this regard are mere statements and accordingly devoid of merit and not acceptable.

In view thereof, the alleged violation as regard to Noticee that Noticee did not perform the risk profiling in the requisite manner and outsoured the same, stands established. Therefore, I hold that Noticee had violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.

With respect to Noticee 2,3 and 4

Noticees' being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing and not being repeated here for sake of brevity are liable for the violations committed by the Noticee and therefore, I hold that Noticees' had violated Regulations 13 (a), 16 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

14.4. **Not performing the suitability assessment and outsourcing the same**

14.4.1. In this regard, it was inter alia alleged that Noticee had violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.

Further, it was inter alia alleged that Noticees' had violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

14.4.2. I note, from material available on record, that in this regard it was inter alia observed and alleged that Noticee had not performed suitability assessment in respect of all of its clients and outsourced a core function of suitability assessment for 48 of its clients.

14.4.3. In this regard it would be relevant to inter alia draw reference to the provisions of Regulation 13 (a) and Regulation 17 of SEBI IA Regulations, 2013, text of which is reproduced below:

Conditions of certificate.

13. *The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

(c) the investment adviser shall abide by the provisions of the Act and these regulations;

"Suitability.
17. Investment adviser shall ensure that,-
(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;
(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;
(c) It understands the nature and risks of products or assets selected for clients;
(d) It has a reasonable basis for believing that a recommendation or transaction entered into:
(i) meets the client's investment objectives;
(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;
(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.
(e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

14.4.4. In this regard, I note that Noticees was inter alia contended that *the said regulation was not applicable to BTPL as the services provided by it on the platform during the Inspection Period, did not fall within the purview of 'Investment Advice'.*

14.4.5. As regards the contention that services provided by Noticee did not fall within the purview of investment advice, the same has already been dealt with in detail in the foregoing and it has inter alia been established that Noticee was providing investment advice to invest /deal in securities through its Bharosa Club Membership product, which was fee based and not available widely to the public.

14.4.6. Further, the submissions of the Noticee in this regard, in so far as Noticees as part of their reply to the SCN have inter alia submitted that, "… *since the services provided by the Noticees on the Platform during the Inspection Period, do not fall within the purview of 'Investment Advice', the said regulation is not applicable to BTPL. …*", in my view are in nature of admission.

14.4.7. As regards the client who had taken advisory under 360 degree financial plan, I note that Noticees as part of their submissions has inter alia submitted that, "…*even with respect to the one client who had taken the trial advisory services under the 360 degree Financial Plan, a copy of the risk profile questionnaire was provided to the said customer in terms of Regulation 17 of the IA Regulations. ..".*

14.4.8. In this regard, I note that the submissions of the Noticees are lacking in nature, as besides the aspect of wanting risk profiling as dealt with in detail in the foregoing, mere providing of the risk profile questionnaire to a customer, by itself does not demonstrate about Noticee having performed suitability assessment. In other words, I note that Noticees have not demonstrated with relevant details and documents as to how Noticee was performing the suitability assessment.

14.4.9. As regards the alleged violation that Noticee had outsourced the core function of suitability assessment for 48 of its clients, I note that Noticees have not made any specific submissions. I note that the reply of the Noticee to SEBI earlier in this regard, as its response to the findings arising out of the inspection by SEBI, also was out of context in so far as Noticee had merely stated that, *'.. Please see serial number 3 response …'*, serial number 3 being related to alleged violation in respect of Noticee not having performed risk profiling in the requisite manner. Accordingly, I note that Noticees have not demonstrated with relevant details and documents, to the contrary.

In view thereof, the alleged violation as regard to Noticee that Noticee did not performed the suitability assessment and outsourced the same, stands established. Therefore, the Noticee had violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers)

Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 and Noticees had violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

With respect to Noticee 2,3 and 4

Noticees' being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing and not being repeated here for sake of brevity are liable for the violations committed by the Noticee and therefore, I hold that Noticees' had violated Regulations 13 (a), 17 and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

14.5. **Not providing requisite disclosure**

14.5.1. It was inter alia alleged that the Noticee had violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.
Further, it was inter alia alleged that Noticees' had violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.5.2. In this regard, it was inter alia observed and alleged that in respect of the client under 360 degree financial plan the Noticee had not provided adequate disclosures related to material facts involving key features of the products class advised particularly, performance track record and failed to draw the client's attention to the warnings relating to an investment product class which it was recommending to the client.

14.5.3. In this regard, it would be relevant to inter alia draw reference to the provisions of Regulation 13 and Regulation 17 of SEBI IA Regulations, 2013, text of which is reproduced below:

Conditions of certificate.

13. *The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

(d) the investment adviser shall abide by the provisions of the Act and these regulations;

18. Disclosures to clients.

"

…

(6) An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.

(7) An investment adviser shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it is recommending to the client.

…

".

14.5.4. I note that in this regard Noticees as part of their submissions as reply to the SCN have inter alia contended that, *' … BTPL did not provide any investment advice on Bharosa Club Website, Smallcase and 360 Degree Financial Plan and is thus, not an investment advisor qua the said users. Therefore, there was no requirement for BTPL to provide any disclosures ...', and that, ' … Notwithstanding the aforesaid, BTPL provided relevant disclosures in its terms of service on the Bharosa Club Website…With respect to 360-Degree Financial Plan, where a single test customer was sought to be serviced, the engagement was terminated at a preliminary stage, prior to providing any investment advisory services. The user decided to not go ahead with the Plan as expressed vide his email dated*

19.03.2020. A copy of the email dated 19.03.2020 is attached herewith as Annexure 12. …'.

14.5.5. In this regard from material available on record I note that it had inter alia been observed by SEBI that as per information submitted by Noticee as part of the Pre Inspection Questionnaire the fee charged in respect of 360 Degree Financial Plan by the Noticee excluding taxes was Rs. 50,000/year. Further it had inter alia also been observed that for the one client who had taken advisory under 360 degree financial plan while the Noticee had provided a copy of risk profiler sent by it to the client however copies of the responses of the client and suitability assessment was not provided and also the risk profiler was not as per requirements under Regulation 16 of SEBI IA Regulation.

14.5.6. I note that the observations and alleged violation in this regard were communicated by SEBI to the Noticee vide SEBI Letter dated July 02, 2021 inter alia seeking comments together with documents if any which Noticee may choose to rely upon. In response Noticee had submitted that, '… The performance records of any products recommended to the customer are in the Tools section of our membership website, of which the client was a member. Again, this was a one-off test case not an ongoing business for us. …'

14.5.7. In this regard, I note that in terms of provisions of Regulation 18 of SEBI IA Regulations, 2013, Noticee was inter alia required to make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record and to draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it was recommending to the client.

14.5.8. I also note that Noticees have contended in their reply to the SCN that "*the performance records of any products recommended to the customer are in the 'tools' section of the Noticees' membership website, of which the client was a member….".* In this regard I note that Noticees have not submitted any document in order to support its contention. In absence of the same, the above submission of Noticees as merely an assertion and hence cannot be accepted.

14.5.9. With regard to the contention that *"the advice given by the Noticees under 360 degree Financial Plan was a one-off test case and not an ongoing business for the Noticees*.", I note from the material available on record that the alleged violation in this regard are based on the documents of advice provided to its 360 degree financial planning product clients wherein it was noted that no disclosures were made.

14.5.10. In this regard I note from material available on record that wrt 360 Degree Financial Plan that there was an email dated January 12, 2020 16:19 Hrs from Sanjay Bhargava <sanjay@bharosaclub.com>, to Rxxhaxxn G. <xaxx_x0x0@yahoo.com> (for brevity 'the 360 degree client' / 'the client') inter alia reading, *"… I plan to work with up to five members to prepare a 360 Degree Plan for them. The cost will be a one-time fee of …. Rs.50000 +GST if total assets are over 10 cr. If you are interested in working with me on your plan then remit … Rs. 59000 to …..".*

14.5.11. In this regard from material on record I note there was an email dated January 15, 2020, 10:20 Hrs, from Sanjay Bhargava <sanjay@bharosaclub.com>, to Rxxhaxxn G. <xaxx_x0x0@yahoo.com> (for brevity 'the 360 degree client' / 'the client') inter alia reading, "*… You should transfer 59000. Will send you an info-gathering questionnaire once you have remitted the fee. ".*

14.5.12. In this regard from material on record, I note there was an email dated January 15, 2020, 12:00 PM, from Sanjay Bhargava <sanjay@bharosaclub.com>, to Rxxhaxxn G. <xaxx_x0x0@yahoo.com>

(for brevity ‘the 360 degree client’ / ‘the client’) bearing subject ‘360 Degree Financial Plan’ inter alia reading, *“ … Welcome to the Bharosa Club 360-dgree Plan … . Here are the outputs you can expect. 1. Lifetime financial projection … 3. Projection Strategies 4. Buy, Hold or Sell … 7. Customized What if Scenarios …. .”.*

14.5.13. I note from material on record that there was an email dated January 15, 2020, 12:17 PM, from Sanjay Bhargava <sanjay@bharosaclub.com>, to the 360 degree client bearing subject ‘Risk Profile Quaestionnaire’ and inter alia relating to four questions pertaining to tenure regarding withdrawal of money from investments, average best and worst return possible %return outcome for investement, % of total wealth planned to invest and investments currently held.

14.5.14. Further, in this regard from material on record I note there was an email dated January 17, 2020 from Rxxhaxxn G. <xaxx_x0x0@yahoo.com> (for brevity ‘the 360 degree client’ / ‘the client’) addressed to Sanjay (read Sanjay Bhargava) inter alia reading, *”… I have just opened your account as a payee in my HDFC Bank. I will be able to transfer 50K today and 9K tomorrow…..” .*

14.5.15. I note from copy of email dated March 19, 2020 from sanjay@bharosaclub.com inter alia in response to the email dated March 19, 2020 12:12 pm of Rxxhaxxn G. <xaxx_x0x0@yahoo.com> wherein it had inter alia been stated that, *“ … do have unrealized losses in equity … you could sell these and switch to equity. …. If, not clear call. You should* avoid *paying tax on the short term cap gain. ”.* I note that subsequent to this email, there was an email of March 19, 2020 1:01PM from Rxxhaxxn G. <xaxx_x0x0@yahoo.com> inter alia stating, *“Okay will do that. …”.*

14.5.16. Further in this regard, I also note from material available on record that there is a copy of invoice raised by the Noticee in respect of the 360 degree client viz., Invoice No. 360/19-20/0001 dated January 17, 2020 inter alia bearing name of the 360 degree client under column regarding customer info for Total Amount Rs. 59000.00 and indicating the Noticee as /under title ‘Bharosa Advisor’.

14.5.17. It is thus evident that it is a matter of record that Noticee had a client under its 360 degree financial plan, which has not been disputed by the Noticee. It is also on record that the 360 degree client was charged fee of Rs. 59000/- by the Noticee, which too has not been disputed by the Noticee. I also note that as regards the allegation that for the client who has taken advisory under 360 degree financial plan while the Noticee had provided a copy of risk profiler sent to him vide email however the response of the client and suitability assessment had not been provided by the Noticee to SEBI, even during the instant proceedings Noticees have not submitted relevant details along with documents to prove to the contrary.

14.5.18. In view thereof, the allegation that in respect of the client under 360 degree financial plan the Noticee had not provided adequate disclosures related to material facts involving key features of the products class advised particularly, performance track record and failed to draw the client’s attention to the warnings relating to an investment product class which it was recommending to the client, stands established.

Accordingly, I hold that Noticee had violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 and Noticees had violated provisions of Regulations 13(a), 18(6), 18(7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2,3 and 4

Noticees’ being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing and not being repeated here for sake of brevity are liable for the violations committed by the Noticee and therefore, I hold that Noticees' had violated Regulations 13 (a), 18 (6), 18 (7) and Clauses 5, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.6. **Non-maintenance of records-**

14.6.1. In this regard, it was inter alia alleged that Noticee had violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

Further, it was inter alia alleged that Noticees' had violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.6.2. In this regard, I note that as regards records of KYC it was inter alia observed by SEBI that the Noticee vide point 12 of the pre inspection questionnaire had submitted that it had not obtained any KRA and CKYC registration. Under point 18.8 of the PIQ at page 69, the entity submitted details related to KYC procedures that for the clients taking general advice and using their tools, they do not do KYC, if the clients do transaction through them they rely on KYC done by MFU using CAN number given by MFU and for the clients using their product on Smallcase portal, Smallcase technologies performs the KYC. The entity has also enrolled one client under 360 degree financial plan and for the same, the entity on the day of inspection provided screenshots of KYC details as obtained using CAN number given by MFU.

14.6.3. In this regard, I note that as regards records of risk profiling /risk assessment /suitability assessment it was inter alia observed by SEBI that the Noticee vide point 18 of pre inspection questionnaire had submitted that for clients taking general advice, risk profiling and suitability assessment was unnecessary, there are 138 such clients out of total 187 clients. For 48 clients who have subscribed for entity's services through Smallcase, Noticee on the day of inspection had submitted that risk profiling of such customers' was performed by Smallcase. After risk profiling was done the customer had access to the advice of the entity without their intervention or review. The data related to risk profile and KYC was maintained at Small case and was available to Noticee upon request. For the client who had taken advisory under 360 degree financial plan, the Noticee had provided copy of risk profiler sent to him vide email however, the responses of the client were not provided.

14.6.4. As regards records of advice, it was observed by SEBI that the Noticee had provided client register containing details viz., Name, email, Mobile, PAN and AUM. Further in respect of smallcase clients the details of product subscribed was provided. In respect of the one client under 360 degree planning the entity had submitted email in respect of advice given to the client. However as regards records of rationale, it was observed by SEBI that the Noticee had not provided any record of rationale for client under general advisory and under 360 degree financial plan. As regards clients who had subscribed for /through small case it was observed that while the Noticee had shared the composition of their bucket of stocks recommended on the platform, however, no rationale viz., selection of specific stocks and assigning specific weights to the selected stocks etc. was recorded.

14.6.5. As regards yearly audit, it was observed by SEBI that the Noticee vide point 33 of the pre inspection questionnaire had submitted that no audit was done. Further, the Noticee on the day of inspection had submitted that their activities under general advisory were not governed under SEBI

Regulations and for clients subscribing to their services through Smallcase platform, compliance activities were handled by Smallcase. In this regard it was observed that irrespective of the contention about its business model, Noticee should have undertaken the yearly audit in the requisite manner.

The relevant text of inter alia provisions alleged to have been violated are reproduced below:

"…

Maintenance of records.
19. (1) An investment adviser shall maintain the following records,-

(a) Know Your Client records of the client;
(b) Risk profiling and risk assessment of the client;
(c) Suitability assessment of the advice being provided;
[41][(d) Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;]
(e) Investment advice provided, whether written or oral;
(f) Rationale for arriving at investment advice, duly signed and dated;
(g) A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.

(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:

Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

(3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India [42][and submit a report of the same as may be specified by the Board].

…

[41] Substituted by the SEBI (Investment Advisers) (Amendment) Regulations, 2020, w.e.f. 30-09-2020. Prior to its substitution, clause (d) read as under;
"(d)Copies of agreements with clients, if any;"
[42] Inserted by the SEBI (Investment Advisers) (Amendment) Regulations, 2020, w.e.f. 30-09-2020.

".

14.6.6. In this regard, I note that in terms of extant applicable provisions of Regulation 19(1) of the SEBI IA Regulations, 2013, Noticee as an investment adviser was required to maintain records relating to know your client records of the client, risk profiling and risk assessment of the client, suitability assessment of the advice being provided, copies of agreements with clients, record relating to written or oral investment advice provided, duly signed and dated records of rationale for arriving at investment advice, register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice. This apart as an investment advisor Noticee was also required to conduct yearly audit in respect of compliance with the SEBI IA Regulations 2013 from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India.

Records of KYC

14.6.7. In this regard, I note from material available on record that Noticee as part of its reply dated July 12, 2021 in response to the findings of the inspection had inter alia submitted to SEBI that, ' … *We have had CVLKRA registration since 2016 and have also registered with NDML recently. We have now started keeping records of KYC documents of all our Smallcase subscribers. .. For Bharosa Club members they are using our portal as an information site with no specific advice. Some of them act using other websites and some act on MFU portal. Hence we do not feel we need to keep their records. ..'.*

14.6.8. In this regard, I note that the response of the Noticee to SEBI earlier was in nature of admission in so far as Noticee had inter alia submitted that they have now started keeping records of KYC as regards its smallcase subscribers.

14.6.9. Further in this regard, I note that the submissions of the Noticees during instant proceedings too, are in nature of admission in so far as Noticees as part of their submissions as reply to the SCN during the instant proceedings have inter alia submitted that, ' … *The Noticees have also started keeping records of KYC documents of all their Smallcase* *subscribers. Furthermore, the users of the Bharosa Club Website were using it to seek general information with no specific advice, therefore such records of members were not being kept. …'.*

Records of risk profiling /risk assessment /suitability assessment:

14.6.10. I note from material available on record that SEBI in this regard had inter alia observed that, ' …*The entity vide point 18 of PIQ has submitted that for clients taking general advice, risk profiling and suitability assessment is unnecessary, there are 138 such clients out of total 187 clients. For 48 clients who have subscribed for entity's services through Smallcase, entity on the day of inspection has submitted that risk profiling of such customers' are performed by Smallcase. After risk profiling is done the customer has access to the advice of the entity without their intervention or review. The data related to risk profile and KYC is maintained at Small case and is available to entity upon request. For one client who has taken advisory under 360 degree financial plan of the entity the entity has provided a copy of risk profiler sent to him vide email however, the responses of the client is not provided.*

14.6.11. In this regard, it would be pertinent to draw reference to the allegation that Noticee had not undertaken and maintained records of risk profiling and risk assessment of its clients which had already been dealt with in details in the forgoing (reference drawn to allegation relating to 'Not performing the risk profiling in the requisite manner and outsourcing the same'). Accordingly the same is not being repeated as matter of brevity. I note that since the risk profiling and risk assessment of its clients was not conducted by Noticee, as already established in the foregoing, it is evident that Noticees had failed to maintain records of risk profiling /risk assessment /suitability assessment.

Records of Advice:

14.6.12. In this regard, Noticees have submitted that "*the role of BTPL is limited to publishing information on the Smallcase platform, any other details pertaining to records of advice on the Smallcase platform can be obtained from Smallcase."* In this regard, I note that the instant proceeding is with respect to Noticee hence the aforesaid submission of Noticee is out of context and cannot be accepted.

14.6.13. Further, Noticees have submitted that *"there was only one user….. relevant information with respect to the user of the 360 degree Financial Plan has duly been submitted to SEBI and is a part of the SEBI record.."*

14.6.14. I note from material available on record that Noticees in this regard have not submitted any documentary evidence along with details and in absence of any documents, the said submission of Noticee is merely an assertion and hence cannot be accepted.

Records of Rationale:

14.6.15. With regard to allegation that Noticee had not provided any record of rationale for client under general advisory and under 360 degree financial plan, I note that the submission of the Noticees to SEBI as part of its reply to the SCN during the instant proceedings are in nature of admission in so far as Noticees have submitted that, '… *Noticees have not provided any investment advice to the users on the Bharosa Club Website, Smallcase platform and 360 degree Financial Plan. Therefore, there was no requirement for the Noticees to provide any record of rationale…'.* As this aspect has already been dealt with in detail in the foregoing, the same is not being repeated here for sake of brevity.

Yearly Audit:

14.6.16. As regards the allegation that Noticee had not conducted the yearly audit, I note from material available on record that Noticee in its response to the Pre- Inspection Questionnaire to SEBI earlier had inter alia stated that no audit was done. In this regard I note that during the instant proceedings while the Noticees have submitted that audit was conducted with respect to the Financial Year 2020-21, Financial Year 2021-22 and Financial Year 2022-23, however, Noticees have neither submitted any details nor relevant documents in support of their contention /submissions. In absence of any documentary evidence, the aforesaid submissions of the Noticees are merely an assertion and hence cannot be accepted.

14.6.17. In view thereof, the allegation that Noticee did not maintain records, stands established and therefore I hold that Noticee had violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2,3 and 4

14.6.18. Noticees' being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing and not being repeated here for sake of brevity are liable for the violations committed by the Noticee and therefore, I hold that Noticees' had violated Regulations 13 (a), 19 (1), 19 (3) and Clauses 2, 4, 8 and of Code of Conduct as specified in Third Schedule under regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.7. **Failure to obtain SCORES registration and displaying the information in respect of status of complaints on website**

14.7.1. It was inter alia alleged that the Noticee by not obtaining SCORES authentication, the Noticee had violated clauses 5,7, 14 and 16 of SEBI

Circular No. CIR/OIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and by not displaying the information in respect of status of complaints on its website, the Noticees had violated the provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

Further, it was inter alia alleged that the Noticees' had violated clauses 5, 7, 14 and 16 of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.
Further, it was inter alleged that the Noticees' had violated the provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.7.2. In this regard, it was inter alia observed and alleged by SEBI that the entity vide point 36 of pre-inspection questionnaire Noticee submitted that it did not have a SCORES registration. Further on the day of inspection, the entity submitted they had neglected to register with SCORES. As checked from SCORES portal, no complaint is found to be registered against the entity during the inspection period. Upon perusal of Homepage of the website of the entity, the said information in respect of the status complaints was not found. Therefore, it was observed by SEBI that the entity had failed to obtain SCORES registration and display the information in respect of status of complaints on its website as mandated by SEBI.

14.7.3. The relevant text of provisions alleged to have been violated are reproduced below:

SEBI Circular no. CIR/OIAE/1/2014 dated December 18, 2014

"5. *All newly listed companies and SEBI registered intermediaries (excluding Stock Brokers, Sub-Brokers and Depository Participants) are hereby advised to send their details as per Form-A and Form-B annexed to this Circular, respectively to SEBI in hard copy and by email to scores@sebi.gov.in and obtain SCORES user id and password immediately within a period of one month from the date of listing. The email id to be furnished by the listed company / SEBI registered intermediary for receiving SCORES user id and password from SEBI has to be preferably a corporate email id and necessarily a permanent one. Failure by any listed company or SEBI registered intermediary to obtain the SCORES user ID and password would not only be deemed as non-redressal of investor grievances but also indicate willful avoidance of the same.…"*

"*…*

7. The registered intermediaries shall submit the details in hard copy (Form-B) to the Department/Division of SEBI which has granted them registration to operate in the securities market. SCORES user id and password of an intermediary shall be created only after receiving approval from the concerned Department/Division of SEBI…."

"….

14. The Board of Directors of the listed company or the Board of Directors/ Proprietor/ Partner of the registered intermediary shall be responsible for ensuring compliance with the provisions of this Circular…."

"….

16. All companies whose securities are listed on recognized Stock Exchanges and intermediaries registered with SEBI are advised to comply with this Circular…"

Redressal of client grievances.

"…

21.(1)…

(2)An investment adviser shall have adequate procedure for expeditious grievance redressal.

…"

14.7.4. In this regard, I note that Noticee was required to have adequate procedure for expeditious grievance redressal as per Regulation 21(2) of SEBI (IA) Regulation, 2013.

14.7.5. In this regard I note that Noticees as part of their submissions during instant proceedings made similar submissions as were made by it to SEBI earlier during and in response to the findings of the inspection.

14.7.6. In this regard, I note that the response of Noticee with regard to findings of inspection to SEBI earlier and as part of its reply to the SCN during the instant proceedings in this regard is in nature of admission in so far as Noticees have submitted that "...*soon as it was pointed out to the Noticees that the SCORES registration has not been obtained, the Noticees promptly acted on the same and obtained the SCORES registration. The said information is also displayed on the Bharosa Club Website."*

14.7.7. Further, Noticees have inter alia submitted *"…that the purpose of having SCORES registration is to provide a platform for the aggrieved investors for redressal of their grievances. It is a matter of fact and record that no complaints have found to be registered against the Noticees during the Inspection Period…"* In this regard, I note that the alleged violation in the instant matter is with respect to failure to obtain SCORES registration and displaying the information in respect of status of complaints on website. It goes without saying that since SCORES was the platform for investors being client of the Noticee to register their grievances, if any, in respect of the Noticee and as Noticee had failed to obtain the SCORES registration itself, the contentions of the Noticee in this regard are devoid of merit and accordingly out of context and hence cannot be accepted. I also note that from material available on record that SEBI had inter alia observed that the Noticee had accepted the observation and submitted that it will take SCORES registration. As regards the allegation relating to Noticee not having displayed the information in respect of status of complaints on its website, I note as per material available on record Noticee had not submitted any response in respect of displaying the information in respect of status of complaints on its website as mandated by SEBI and further that the status was not displayed even as of date of inspection by SEBI (relevant extract of website having been placed on file). As regards the allegation that Noticee had failed to display the information in respect of status of complaints, even if assuming a situation that there were no complaints, generally and /or logically speaking having regard to the fact that information in this regard was mandated to be required to be displayed by way of circular issued by a regulatory body, the fact that there are no /NIL complaints, in itself too, is also an information and therefore required to be displayed on the website accordingly, which Noticee has failed to demonstrate in the instant case and thus failed to prove to the contrary. I note that in this regard, Noticee has not demonstrated with relevant details and documents that as an IA it had displayed the information in respect of status of complaints in the prescribed format on its homepage (without scrolling) of their website /mobile app, as required in terms of provisions of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

In view thereof, the allegation that Noticee failed to obtain SCORES registration and displayed the information in respect of status of complaints on website, stands established. Therefore, I hold that Noticee had violated clauses 5,7, 14 and 16 of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and by not displaying the information in respect of status of complaints on its website, the Noticee had violated the provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2,3 and 4

Noticees' being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing and not being repeated here for sake of brevity are liable for the violations committed by the Noticee and therefore, I hold that Noticees' had violated clauses 5, 7, 14 and 16 of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 Regulation 21 (2) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

Further, I hold that Noticees' had violated the provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.8. **Failure to provide execution services through a subsidiary /separately identifiable department and making it obligatory for its clients to take execution services.**

14.8.1. It was inter alia alleged that Noticee had violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

Further, it was inter alia alleged that Noticees' has violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.8.2. In this regard, it was inter alia observed and alleged by SEBI that the entity had submitted vide point 9 of the PIQ that they had two active people in the company. The entity vide points 27, 28 and 29 submitted that they provide free of cost execution services to their clients and keep such services segregated from their clients under 360 degree plan. In respect of the samples document for recorded rationale and correspondence with clients, the entity submitted an email written to one of its clients in which the query related to execution services were answered from email advisory@bharosaclub.com.The entity vide point 20 of PIQ submitted that the same email was used for providing written advice. The entity also offers one of its services through small case platform. From the help section of the entity's page on the said platform it was observed that in order to subscribe to the entity's product the clients need to be a client of the partner brokers of Smallcase.

14.8.3. In this regard, it was observed by SEBI that the entity is run by two people without any division of departments, further, it uses the same email for providing advisory services and execution services, hence it was noted by SEBI that the entity failed to provide execution services through a subsidiary/separately identifiable department. Further, the entity through its associate Smallcase made it obligatory for its clients to take execution services of partner brokers of Smallcase in order to subscribe the entity's service.

14.8.4. The relevant text of inter alia provisions alleged to have been violated are reproduced below:

"…

Conditions of certificate.

13. *The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

(e) the investment adviser shall abide by the provisions of the Act and these regulations;

..."

"…

General responsibility.

15. (1)……..

(2)……

(3) An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.

(4) An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services are clearly segregated from all its other activities, in the manner as prescribed hereunder.

…"

"…

Segregation of execution services.

22 Investment advisers which are banks, NBFCs and body corporate providing distribution or execution services to their clients shall keep their investment advisory services segregated from such activities:

Provided that such distribution or execution services can only be offered subject to the following:

(a) The client shall not be under any obligation to avail the distribution or execution services offered by the investment adviser.

(b) The investment adviser shall maintain arms length relationship between its activities as investment adviser and distribution or execution services.

…"

14.8.5. Noticees have submitted that *"since the role of the Noticees is limited to publishing information on the Smallcase platform, any other details pertaining to how the transactions are being facilitated/ executed on the Smallcase platform can be obtained from Smallcase".* In this regard, I note that the instant proceedings are in respect of the Noticee with regard to the violations as alleged. Hence, the above submission of the Noticee is out of context and hence cannot be accepted.

14.8.6. Noticees further submitted that *"execution of its members' mutual fund transaction is done through MFU, and BTPL merely provides the link for the same. It is clarified that BTPL has no role with execution of any transaction with MFU and the users transacting on the said MFU link are the clients of MFU."* In this regard, I note that Noticee has not provided any documents in order to support their submission. In absence of the same, the said submission of the Noticee is mere an assertion and hence cannot be accepted.

14.8.7. Noticee further submitted that *"Noticees are in no manner making it obligatory for their clients to take execution services of partner brokers of Smallcase."* In this regard, I note from the Noticees' Website that the said Website during the relevant time provided a medium for buying smallcase through their partner brokers. The relevant extract of the same is given below:

"You can buy smallcase on any of the partner brokers. Select a smallcase, select your broker and invest in less than 2 clicks.

Our partner brokers are:

Zerodha, AxisDirect, edelwise, HDFC Securities, Kotak Securities, IIFL Securities, 5 Paisa, Aliceblue, angel Broking, Trustline, Upstox and Motilal Oswal"

"If you have a trading & demat account with one of the supported brokers, you can start investing in smallcases, By clicking on 'Buy smallcase' or 'Login' you can view the supported brokers and login with the respective credentials. The funds from your broker account would be used for investing insmallcases………."

Further, Bharosa Club also states as to who can subscribe these smallcases:

"…
Bharosa Club decides who can invest in the smallcases created by them and can create two types of smallcases:

- *Exclusive smallcases: smallcases which require a subscription to Bharosa Club's Advisory in order to invest in the smallcase. You can subscribe to a smallcase directly from the samllcase profile through the subscription form.*
- *Public smallcases: …."*

"…Exclusive smallcases can be subscribed directly from the smllcase profile by following the steps below:
- *Fill the subscription form with your name, email and phone number*
- *Choose your broker amongst the list of our partner broker and login with your broker credentials*
- *Select the subscription plan and make the payment.*

…."

14.8.8. From the material available on record, it is noted that in order to subscribe to the Noticees' product the clients need to be a client of the partner brokers of Smallcase. The same was also provided to the Noticees as part of Annexures to the SCN and Noticees have not disputed the said Annexure of the SCN.

In view thereof, the alleged violation as regard to Noticee that Noticee failed to provide execution services through a subsidiary/separately identifiable department and made it obligatory for its clients to take execution services, stands established. Therefore, I hold that Noticee had violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2,3 and 4

Noticees' being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing and not being repeated here for sake of brevity are liable for the violations committed by the Noticee and therefore, I hold that Noticees' had violated provision of clause 1.(iv) of SEBI circular SEBI/HO/IMD/DF/CIR/P/2019/169, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992. Further, I hold that Noticees' had violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.9. **Not doing KYC of clients and outsourcing this core compliance function of performing KYC to MFU and smallcase.**

14.9.1. It was inter alia alleged that the Noticee had violated Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the provisions of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.

Further, it was inter alia alleged that the Noticees' had violated Regulation

13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992.

14.9.2. In this regard, it was inter alia observed and alleged that the entity *vide* point 12 of PIQ submitted that it had not obtained any KRA and CKYC registration. Under point 18.8 of the PIQ, the entity submitted details related to KYC procedures that the clients taking general advice and using their tools they do not do KYC, if the clients do transaction through them they rely on KYC done by MFU using CAN number given by MFU and for the clients using their product on Smallcase portal, Smallcase technologies performs the KYC. The entity had also enrolled one client under 360 degree financial plan and for the same, the entity on the day of inspection provided screenshots as obtained using CAN number given by MFU. Therefore, it was observed that the entity does not do KYC of their clients, further, the entity had outsourced a core compliance function of performing KYC to MFU and Smallcase Technologies.

14.9.3. The relevant text of inter alia provisions alleged to have been violated are reproduced below:

"….

Conditions of certificate.

13. *The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

(f) the investment adviser shall abide by the provisions of the Act and these regulations; …."

"….

15.(1)…

(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.

…."

14.9.4. In this regard, I note that Noticee was required to perform Know Your Client procedure as specified by the Board from time to time. In this regard, I note that submissions of the Noticee in this regard as part of its reply to the SCN are in nature of admission in so far as Noticees have submitted that, *" .. in the absence of any users, there was no requirement for BTPL to keep or maintain any record or do KYC of users .. .".*

14.9.5. Further, I note from material available on record that Noticees had submitted wrt KYC compliance in the pre inspection questioner at point no. 18 that, " … *Many of our clients do not use the company for transactions. They only use our tools and general advice. If they use the Company for transacting in mutual funds, then they come to us with KYC already done and a Common Account Number issued by MFU. For our Bharosa Club smallcase, Smallcase Technologies meets the compliance requirement*. …" .

14.9.6. In view thereof, the alleged violation as regard to Noticee that Noticee was not doing KYC of clients and outsourcing this core compliance function of performing KYC to MFU and smallcase, stands established. Therefore, I hold that Noticee had violated provisions of Regulation 13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the provisions of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011.

With respect to Noticee 2,3 and 4

Noticees' being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing and not being repeated here for sake of brevity are liable for the violations committed by the Noticee and therefore, I hold that Noticees' had violated provisions of Regulation

13 (a), 15 (8), Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 and all the clauses of SEBI circular CIR/MIRSD/24/2011 dated December 15, 2011 r/w Section 27 of the SEBI Act, 1992. Further, I hold that Noticees' had violated Regulations 13 (a), 15 (3), 15 (4), 22 (a), 22 (b) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15 (9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.10. **Not adopting any procedures /written procedures to implement the anti-money laundering provisions as envisaged under the PMLA and outsourcing the same**

14.10.1. It was inter alia alleged that Noticee had violated all the provisions of following SEBI Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06, dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, CIR/MIRSD/24/2011 dated December 15, 2011, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

It was inter alia alleged that Noticees' have violated all the clauses of following SEBI Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06, dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, CIR/MIRSD/24/2011 dated December 15, 2011, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

14.10.2. In this regard, it was inter alia observed and alleged that the entity vide points 39 and 40 of pre-inspection questionnaire at page 65 submitted that the compliance requirements for AML are handled by MFU and Smallcase

Technologies for them and they do not take any cash / demand drafts as payment. Further the entity during the day of inspection, submitted that their core activities (except for one small test customer – details of which have been shared in our 360 degree plan details) are not governed under the SEBI regulations as they come under the General Advice category. It is not required for our core business and handled through Smallcase for the rest of the business. In this regard, SEBI observed that as per the provisions of SEBI circulars, irrespective of their business model the entity should have adopted written procedures to implement the anti-money laundering provisions as envisaged under the PMLA, however, the entity failed to do so, further, the entity outsourced a core compliance function of maintaining AML standards to MFU and Smallcase Technologies.

14.10.3. In this regard, I note that Noticee has neither disputed nor denied the alleged violation and instead the submissions of the Noticees earlier as also during instant proceedings are in nature of admission in so far as Noticees as part of their response to SEBI to the findings of the inspection had inter alia submitted that, *' … We acknowledge this as a lapse, and will rectify going forward …',* and as part of their submissions during instant proceedings have inter alia submitted that, "…*the Noticees, as on date, have adopted written procedures to implement the anti-money laundering provisions as envisaged under the PMLA."*

14.10.4. In view thereof, the alleged violation as regard to Noticee that Noticee did not adopt any procedures /written procedures to implement the anti-money laundering provisions as envisaged under the PMLA and outsourced the same, stands established. Therefore, I hold that Noticee had violated the provisions of SEBI Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06, dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, CIR/MIRSD/24/2011 dated December 15, 2011, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013.

With respect to Noticee 2,3 and 4

Noticees' being the Directors and Representative /CEO / Compliance Officer during the relevant time, accordingly, being in charge of conduct of its business, as brought out in the foregoing and not being repeated here for sake of brevity are liable for the violations committed by the Noticee and therefore, I hold that Noticees' had violated all the clauses of following SEBI Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06, dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, CIR/MIRSD/24/2011 dated December 15, 2011, Regulation 13 (a) and Clauses 8 and 9 of Code of Conduct as specified in Third Schedule under Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 r/w Section 27 of the SEBI Act, 1992.

Issue No. II: Do the violations of provisions mentioned above, if any, attract monetary penalty under Sections under section 15EB and 15HB of the Securities and Exchange Board of India Act, 1992?

15. It has been established in the preceding paragraphs that Noticees have violated the stated provisions of SEBI Act, 1992, SEBI (IA) Regulation, 2013 and SEBI Circulars.

16. In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006][5] SCC 361} – wherein the Hon'ble Supreme Court of India held that, "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…………..".

17. In view of the above, I conclude that the Noticees are liable for monetary penalty under the provisions of Section 15EB and 15HB of the SEBI Act, 1992, which reads as under:

[62][CHAPTER VIA
PENALTIES AND ADJUDICATION

"….
***Penalty for default in case of investment adviser and research analyst**.*
15EB. Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.]

…."

"….
Penalty for contravention where no separate penalty has been provided.
15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [4][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]
…."

Note: for detailed /complete text/provisions etc., relevant Act may please be referred.

Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

18. While determining the quantum of penalty under section 15EB and 15HB of SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act, 1992 which reads as under-

"….
Factors to be taken into account while adjudging quantum of penalty

***15J.** While adjudging quantum of penalty under section 15-I, or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely:-*

a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
b) *the amount of loss caused to an investor or group of investors as a result of the default;*
c) *the repetitive nature of the default.*

…."

19. In the instant case, I find that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or group of investors as a result of the violations committed by the

Noticees. There is nothing on record to show that the violations committed by the Noticees are repetitive in nature. However, I cannot ignore that compliance with extant applicable provisions of IA Regulations, as cited, in the instant matter, was obligatory and which SEBI is duty-bound to enforce compliance of. In the present matter, Noticee 1 being SEBI Registered Investment Adviser, Noticee 2 being Director and the representative of the Investment Adviser, Noticee 3 being CEO and Director of Investment Adviser, Noticee 4 being Compliance officer and Director of the Investment Adviser during relevant period of time, were required to comply with the extant applicable provisions of law which they failed to and such non-compliance and needs to be dealt with suitable penalty.

E. ORDER

20. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticees and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticees for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticees in this case:

<table>
<tr><th>Name of Noticee</th><th>Penalty Under Section</th><th>Penalty Amount (Rs.)</th></tr>
<tr><td>Bharosa Technoserve Private Limited (Noticee 1)</td><td>Section 15EB of SEBI Act, 1992</td><td>10,00,000/-</td></tr>
<tr><td>Mr. Sanjay Bhargava (Noticee 2)</td><td>Section 15HB of SEBI Act, 1992</td><td rowspan="3">10,00,000/-
(Joint and Several basis)</td></tr>
<tr><td>Mr. Sahil Bhargava (Noticee 3)</td><td>Section 15HB of SEBI Act, 1992</td></tr>
<tr><td>Ms. Anita Bhargava (Noticee 4)</td><td>Section 15HB of SEBI Act, 1992</td></tr>
</table>

21. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW

22. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

23. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

PLACE: MUMBAI
DATE: September 11, 2024

AMAR NAVLANI
ADJUDICATING OFFICER